S. HRG. 99-765

DISTRIBUTION OF FUNDS AWARDED THE SISSETON-WAHPETON TRIBES OF SIOUX INDIANS BY THE INDIAN CLAIMS COMMISSION IN 1967

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2118

TO PROVIDE FOR THE DISTRIBUTION OF FUNDS APPROPRIATED TO PAY A JUDGMENT AWARDED TO THE SISSETON AND WAHPETON TRIBES OF SIOUX INDIANS IN INDIAN CLAIMS COMMISSION DOCKETS NUMBERED 142 AND 359, AND FOR OTHER PURPOSES

APRIL 17, 1986
WASHINGTON, DC

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CONTENTS

	Page
S. 2118, text of	3
Statements of:	
Abdnor, Hon. James, a U.S. Senator from South Dakota	7
Hawkins, Russell, chairman, Sisseton-Wahpeton Tribal Council, Sisseton, SD	10
McKay, Carl, chairman, Devils Lake Sioux Tribe	13
Nelson, Joyce D., Portland, OR	22
Reeser, Ralph, Director of Legislative and Congressional Affairs, Bureau of Indian Affairs	8
Renville, Grady, Sisseton-Wahpeton Tribe	16
Spotted Bird, Leland, chairman, Fort Peck Tribal Executive Board	14
Zollinger, Josephine, Eugene, OR	18
APPENDIX	
Prepared statements of:	
Elbert, Hazel, Deputy to the Assistant Secretary, Bureau of Indian Affairs (tribal services), Department of Interior	27
Hawkins, Russell (with attachments)	29
McKay, Carl	37
Nelson, Joyce D	58
Zollinger, Josephine (with attachments)	41
Insertions for the record:	
Bolton, John R., Assistant Attorney General, U.S. Department of Justice, letter, dated April 17, 1986	59
Flute, Jerry, former tribal chairman, Sisseton-Wahpeton Sioux Tribe, letter, dated April 31, 1986	61
Salazar, Jeannette E., letter, dated April 14, 1986, with attachments, all to Senator Mark Andrews, chairman, Select Committee on Indian Affairs	63

DISTRIBUTION OF FUNDS AWARDED THE SISSETON-WAHPETON TRIBES OF SIOUX INDIANS BY THE INDIAN CLAIMS COMMISSION IN 1967

APRIL 17, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 485, Senate Russell Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews and Gorton.

Staff present: Peter S. Taylor, staff director; Virginia Boylan, staff attorney; Dave Lundgren, staff assistant; Richard Doubrava, staff attorney; Irene Herder, staff secretary; Ipo Lung, professional staff member; and Debbie Storey, professional staff member.

Mr. ANDREWS. The committee will come to order.

Our meeting this morning is on S. 2118, a bill that provides for distribution of funds awarded the Sisseton-Wahpeton Tribes of Sioux Indians by the Indian Claims Commission in 1967.

Legislation was enacted by Congress in 1972 to provide for distribution of these funds, but today a substantial portion of these funds remains undistributed.

The 1972 act authorized and directed the Secretary of the Interior to make a distribution of these judgment funds to four groups of Sisseton-Wahpeton Sioux Indians: First, the Devils Lake Sioux Tribe of North Dakota; second, the Sisseton-Wahpeton Sioux Tribe of North and South Dakota; third, the Sioux Indians who are members of the Assiniboine and Sioux Tribe at Fort Peck; and, fourth, all other Sisseton-Wahpeton Sioux Indians, regardless of tribal membership or blood quantum, who descend from a person who was a member of the Sisseton-Wahpeton Sioux Tribe.

The division of funds between these four groups was determined on the basis of the 1909 McLaughlin Annuity Roll. On this basis, the 1972 act provided that 25 percent of the judgment funds were to be distributed to the descendant class. These funds have not yet been distributed and now amount to more than $6 million.

The legislation before us today would amend the 1972 act to eliminate the descendant class from distribution and would direct that the undistributed funds be divided between the three federally recognized tribal entities to be used for program purposes of the tribes.

A limited distribution is authorized only to members of these three tribes who have not previously received their full distributive share.

[The text of S. 2118 follows:]

99TH CONGRESS
2D SESSION

S. 2118

To provide for the distribution of funds appropriated to pay a judgment awarded to the Sisseton and Wahpeton Tribes of Sioux Indians in Indian Claims Commission dockets numbered 142 and 359, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 24), 1986

Mr. ANDREWS (for himself, Mr. BURDICK, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the distribution of funds appropriated to pay a judgment awarded to the Sisseton and Wahpeton Tribes of Sioux Indians in Indian Claims Commission dockets numbered 142 and 359, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of sections 201 and 202 of the Act of October 25, 1972 (86 Stat. 1168), the funds appropriated by the Act of June 19, 1968 (82 Stat. 239), for the award to the Devils Lake Sioux Tribe of North Dakota, the Sisseton-Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation,

Montana in dockets numbered 142 and 359 before the Indian Claims Commission, including all interest and investment income accrued, less attorney fees and litigation expenses, which have not been distributed to "All other Sisseton and Wahpeton Sioux" in accordance with the apportionment established in section 202(a) of said Act of October 25, 1972 shall be distributed in accordance with the provisions of this Act.

SEC. 2. Subject to the provisions of section 3 of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall distribute the funds referred to in section 1 of this Act to the tribal governing bodies of the Devils Lake Sioux Tribe of North Dakota, the Sisseton-Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribe of the Fort Peck Reservation, Montana. The distribution of such funds shall be apportioned as follows:

Tribe or Group	Percentage
Devils Lake Sioux of North Dakota	28.9276
Sisseton-Wahpeton Sioux of South Dakota	57.3145
Assiniboine and Sioux Tribes of the Ft. Peck Reservation, Montana	13.7579

In the case of the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, the Fort Peck Sisseton-Wahpeton Sioux Council shall act as the governing body for purposes of the distribution of funds provided for in this Act.

SEC. 3. (a) Within one hundred and eighty days after the date of enactment of this Act, the Secretary, in accordance with section 3 of the Act of October 19, 1973 (87 Stat. 467), shall prepare a plan for the use or distribution of the funds referred to in section 1 of this Act.

(b) Any plan prepared pursuant to subsection (a) of this section shall not provide for a per capita distribution to individuals of any of the funds to be distributed except that, upon the request of the tribal governing body and in the same amount as the per capita distribution made to persons whose names appeared on the rolls approved by the Secretary pursuant to section 201(a) of the Act of October 25, 1972 (86 Stat. 1168), the plan may provide for a per capita payment to be made to persons entitled to be enrolled on such rolls but who, for whatever reason, were not so enrolled. If the tribal governing body of any of the tribes named in section 1 of this Act requests that a per capita distribution be made in accordance with the provisions of this section within one hundred and twenty days after the date of enactment of this Act, it shall submit to the Secretary the names of the persons for whom a per capita distribution may be provided in the plan prepared by the Secretary. The determination of the tribal govening body regarding the eligibility of any individual for any per capita distribution that may be made pursuant to this section shall be final.

SEC. 4. (a) Within one hundred and eighty days after the date of enactment of this Act, the Secretary, in accordance with sections 2(c) and 4 of the Act of October 19, 1973 (87 Stat. 467), shall submit to the Congress a plan for the use or distribution of the funds referred to in section 1 of this Act: *Provided*, That an extension of the one hundred and eighty-day period may be requested in accordance with the provisions of section 2(b) of such Act.

SEC. 5. The plan prepared by the Secretary shall become effective and shall be implemented in accordance with section 5(a) of the Act of October 19, 1973 (87 Stat. 467). If, under said section 5(a), either House adopts a resolution disapproving the plan, the Secretary, in accordance with section 5(b) of such Act, shall propose legislation for the use or distribution of the funds referred to in section 1 of this Act.

SEC. 6. None of the funds distributed per capita under the provisions of this Act shall be subject to Federal or State income taxes and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act (42 U.S.C. Sec. 301 et seq.) or any other Federal financial assistance or benefit program.

Mr. TAYLOR. Senator Abdnor has a prepared statement that Victor Doubrava would like to read into the record at this point.

STATEMENT OF SENATOR ABDNOR AS READ INTO THE RECORD BY RICHARD DOUBRAVA

Mr. DOUBRAVA. Senator Abdnor is currently on an airplane right now on his way back to Washington, but because of the interest in and concern about this bill, and about the fact that he is not a cosponsor, even though he is a member of the delegation from the three States that are involved, he wanted to clarify his position, both for the tribe and for interested parties. He wanted me to read this statement for him this morning.

Mr. Chairman, I appreciate having the opportunity to provide remarks concerning this legislation. I am pleased that representatives of the tribe are present today to participate in this hearing on S. 2118. I have followed the progress on this legislation with great interest since it affects many of my constituents as well.

While I certainly understand the reasons for this legislation, I have serious concerns about the implications which will result if Congress decides to take such action.

To me it comes down to a question of fairness and equity. I think my record in both the Senate and the House of Representatives has demonstrated my concern for native Americans in my State and the Nation and I am proud of my relationship with the Sisseton-Wahpeton Sioux Tribe and I want to make it clear that my position on this issue would be the same regardless of which tribes were involved.

When Congress passed this original legislation in 1972, it stipulated that this award would be shared by the three tribes mentioned today. The bill also provided for an apportionment to the lineal descendants of the Sisseton and Wahpeton who were not enrolled with any other of the three tribes.

It is my understanding that since this time, lineal descendants have not, as a matter of course, been included in later judgments. My concern with this legislation is based on a matter of fairness.

While I did not come to Congress until 1973, I believe that we made a commitment to these people and that it should be kept. I understand the position of the tribes and their interest in amending the original legislation as proposed by this bill.

However, one of the most troubling aspects of this legislation is that we are now proposed to again change the rules of the game after we have made a commitment to the native Americans involved in this judgment. This troubles me greatly.

I do not deny that this matter has been poorly handled. I note from the staff brief that many of the records needed to identify and contact these individuals are missing or lost. However, this does not change the fact that we are now proposing to extinguish the rights of nearly 2,000 individuals to whom Congress promised compensation.

I have no opposition to enacting future legislation which excludes lineal descendants. Yet, upon careful consideration, I have serious reservations about supporting this legislation. I know that comes as a bitter disappointment to the sponsors of this legislation

and to the representatives of the Sisseton-Wahpeton Sioux Tribe. However, the rights of those to whom Congress promised compensation deserve to be respected and I cannot in good conscience turn my back on the commitment we made, even though I would greatly like to honor the request of the tribe to support this measure.

Mr. TAYLOR. Thank you very much.

Mr. ANDREWS. Senator Gorton, do you have any opening statement?

Mr. GORTON. No opening statement, Mr. Chairman. I have heard your statement and read the materials.

Mr. ANDREWS. Good. Our first witness today is Ralph Reeser, from the Department of Indian Affairs, Department of the Interior.

Ralph, good to have you here.

Mr. REESER. Mr. Chairman, Hazel Elbert came to work very ill this morning and it was obvious to me that she would not have been able to make it through the hearing, so I am substituting.

Mr. ANDREWS. Well, let me assure you that you can put her full statement in the record and it will be here just as though she had been here and uttered it, every word—or you had uttered its every word for her.

STATEMENT OF RALPH REESER, DIRECTOR OF LEGISLATIVE AND CONGRESSIONAL AFFAIRS, BUREAU OF INDIAN AFFAIRS

Mr. REESER. Fine. Thank you. All right, sir, I will not go into the background that you have already given in your statement. The bill does provide that funds that were designated by Congress for per capita distribution to lineal descendants of the Sisseton-Wahpeton Tribe be paid to tribal governing bodies instead.

We support the bill but recommend that it be amended to bar the tribes from making per capita payments. We believe that this is a capital funds source for the tribes and the tribes should program it.

We also suggest that you give consideration to not requiring the Secretary to submit plans to the Congress. You may just wish to authorize the tribes to program the money and let the Secretary exercise his usual approval of the use of trust funds, rather than requiring further hearings and action.

Mr. ANDREWS. What is the current status of the membership roll for the Sioux at Fort Peck that the 1972 act directed to be completed?

Mr. REESER. I understand that that is now up to date and that there will be 30 or so additional people that were not on the partial payment roll.

Mr. ANDREWS. What is the current status of the roll for lineal descendants?

Mr. REESER. There are still a number of appeals to be finalized. I believe it is about 255 that have not been finalized yet. Perhaps it could be completed within 6 months.

Mr. ANDREWS. Why has it taken so long to complete?

Mr. REESER. Frankly, Mr. Chairman, it seems that it has been a problem of priorities and some problems with a computer. The roll that had been prepared was wiped out of the memory banks and is having to be reconstructed.

Mr. ANDREWS. It is my understanding the Sioux at Fort Peck only received a partial distribution of their share of this judgment. What is the balance of the funds in escrow for Fort Peck's share of this judgment?

Mr. REESER. $194,647. I believe that can be distributed in the near future to tribal members.

Mr. ANDREWS. Will this bill affect the authority of the Department to make final distribution of the Fort Peck funds?

Mr. REESER. No, sir.

Mr. ANDREWS. The McLaughlin roll of 1909 was used to determine the percentage division of the judgment funds between the four groups. How did the Department of the Interior arrive at the original split of the judgment award between the three tribes and the lineal descendants?

Mr. REESER. The original percentages were based on the number of descendants living on the three reservations of the successor groups, and elsewhere, as reflected in the McLaughlin annuity roll used to distribute Sisseton-Wahpeton funds in 1909.

Mr. ANDREWS. What is the current Bureau policy with respect to including descendants and distributions of judgments awarded to Indian tribes by the Indian Commission or the Court of Claims? And what is the policy with respect to per capita distributions generally?

Mr. REESER. Mr. Chairman, over history, I understand that our policy has not been terribly consistent on this matter. Our current policy is that——

Mr. ANDREWS. That is the understatement of the week. Of the month.

Mr. REESER. Our current posture is that where these are payments for a tribal resource and that if there is a modern successor tribe, that tribe should get the money as a capital fund. What the tribe lost was a fixed asset and what Congress is giving them is cash and we believe it should be programmed for the benefit of the tribe in general.

Mr. ANDREWS. Do you see any constitutional infirmity in the legislation before us today?

Mr. REESER. No, sir; and we have signed off on a draft Justice Department legal opinion that also finds that no problem with the bill.

Mr. ANDREWS. When will we get that formal opinion?

Mr. REESER. I think that you should get it later this week or the first of next week.

Mr. ANDREWS. In other words, within 1 week.

Mr. REESER. Yes, sir.

Mr. ANDREWS. Thank you very much. We appreciate your testimony this morning. It has been most helpful. Give Hazel our best. She sent a good spokesman. You have been very agreeable and that is what we would like to hear.

Mr. REESER. Thank you.

Mr. ANDREWS. Our next witness is Russell Hawkins, the chairman of the Sisseton-Wahpeton Sioux Tribal Council from Sisseton, SD.

Mr. Chairman, good to have you here.

Mr. HAWKINS. Thank you.

Mr. ANDREWS. Actually, let us bring up the whole panel. We have got Carl McKay, who is the chairman of the Devils Lake Sioux Tribal Council from Fort Totten and Leland Spotted Bird, who is the chairman of the Fort Peck Tribal Executive Board from Fort Peck and they are accompanied by Bertam Hirsch, who is the attorney for the organized tribes.

Gentlemen, let me assure you that your prepared statements will appear in the record. You can summarize them in any way you want. Our major objective is to make as complete a record as we can so when we go on the floor with the legislation we are sure that we do not have something left uncovered.

Mr. Chairman.

STATEMENT OF RUSSELL HAWKINS, CHAIRMAN, SISSESTON-WAHPETON TRIBAL COUNCIL, SISSETON, SD

Mr. HAWKINS. Thank you, Mr. Chairman. My name is Russell Hawkins. I am the chairman of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation which is in North and South Dakota.

We are sorry that Carl McKay is not here, but we do have, from Devils Lake, Carl Walking Eagle and Alex Grey Waters from Fort Totten. Leland Spotted Bird, chairman of the Fort Peck Sisseton-Wahpeton Sioux Council at Fort Peck Indian Reservation in Montana.

To my left is Felix Renville, the tribal secretary and to my right, Bert Hirsch, our tribal attorney.

Other tribal members here are Grady Renville, councilman, Robin Renville, Martha Renville, Dale Crawford, councilman, and Frank Williams, tribal member.

Before I go through our brief testimony, Senator, I want to offer my most sincere and heartfelt thanks for the three Senators who have cosponsored this legislation—especially to you, Senator Andrews, and to Senator Pressler and Senator Burdick.

I personally do not view this as just an Indian issue. I view this as an issue of basic fairness, of a basic right to a government. I think it is not just an Indian issue. I think it is a lot more than that.

So, with that, we do have a brief testimony I would like to read.

The enactment of S. 2118 is vital for the future development and progress of the three Sisseton-Wahpeton Sioux organization tribal entities and their approximately 20,000 enrolled tribal members.

The legislation would amend Public Law 92-555 enacted in 1972 to eliminate any per capita distribution to the Sisseton-Wahpeton Sioux lineal descendants of funds appropriated in satisfaction to a 1967 judgment rendered by the Indian Claims Commission in favor of the tribes.

As the committee knows, none of the funds set aside for lineal descendants have been distributed and their value now exceeds $6 million.

If enacted, S. 2118 would result in the distribution of these funds directly to the three Sisseton-Wahpeton Sioux tribal governments for tribal programs and projects that would significantly and di-

rectly improve the social and economic circumstances of the tribal members.

Review of the history of the Sisseton-Wahpeton Sioux claims and their disposition in the Indian Claims Commission underscores the justness of S. 2118 and the injustice of Public Law 92-555.

More than 35 years ago the Sisseton-Wahpeton Sioux Tribe and the Devils Lake Sioux Tribe petitioned the Indian Claims Commission for a judgment against the United States for the loss, more than 100 years ago, of lands to which the Sisseton-Wahpeton Sioux held recognized treaty title.

At the time of the tribe's possession of these lands, no individual member of the tribe held any title to any lands. I think that is very important because the tribe as a whole owned the lands, not individuals.

Acknowledging this fact, the Commission, in 1962, determined that the petitioning tribes were solely entitled to litigate the claims on behalf of their members "and all the descendants of the original bands of the Sisseton-Wahpeton Sioux Tribe."

The two petitioning tribes alone prosecuted the Sisseton-Wahpeton Sioux Tribe claims before the Commission. Before the entry of the final judgment, the two petitioning tribes consented to the joinder of the Fort Peck Sisseton-Wahpeton Sioux as party petitioners. Lineal descendants did not seek nor did they participate in the prosecution of these claims.

The final judgment of the Commission, entered on July 25, 1967, concluded that it was the Sisseton-Wahpeton Sioux Tribe as an entity that had been wronged by the United States, for it was the tribe. Again, it is the entity, not the individual members.

Not surprisingly, the Commission entered judgment in favor of the tribes. Nowhere, and I emphasize nowhere, in the lengthy proceedings before the Commission did the Commission address or suggest lineal descendants or individual members of the tribe have any interest in the claims separate from the interests of the tribes as entities.

Nothing in the judgment of the Commission makes any award to any lineal descendants. The award is solely to the tribes. This award was agreed to by the United States in a stipulated settlement approved by the Commission.

Notwithstanding a settlement negotiated by the United States with the tribes and the Commission judgment, the Congress chose, in 1972, to allocate 25 percent of the tribe's award to lineal descendants, many of whose ancestors had severed their tribal relationships with the Sisseton-Wahpeton Sioux Tribe more than 100 years ago and who themselves maintain no current relationship with the tribe.

We believe it to be unprecedented for the Congress, as it did in 1972, to award any part of a judgment against the United States to persons who had no participatory role in the litigation that brought about the judgment and whose interests, if any, were not addressed or included in the judgment.

In sum, the 1972 enactment is historically and legally incorrect and unsound. We strongly believe it is also immoral and unfair for individuals to receive money for lands taken by a tribe as an entity.

Essentially, the claim of the Sisseton-Wahpeton Sioux Tribe has not yet been settled. S. 2118 would fairly and appropriately settle these claims in manner contemplated by the Commission's judgment and the U.S. settlement agreement.

In these times of severe Federal budget cuts, it is evident that an infusion of $6 million into the tribal programs and projects would facilitate the ability of the tribes to maintain essential services to tribal members and to develop long-term projects that would economically and socially benefit the entire tribal community for years to come.

The reallocation of these funds to the tribe would clearly further the national policies of tribal self-determination and economic development.

In addition to eliminating the lineal descendancy distribution, S. 2118 contains two other important provisions. One would permit a per capita distribution to be made to members who are eligible for per capita payment under Public Law 92–555 but who did not receive such a payment. The tribe believes that such people number no more than 25.

Payments to these people therefore would, in the aggregate, amount to approximately $10,000. The tribe believes that these people are entitled to be treated equally with all other tribal members.

Also S. 2118 provides that any plan for the use and distribution of the funds to be allocated to the tribes would be governed by the applicable provisions of the general law governing such matters.

Again, the tribe would like to emphasize that receiving full recompense for the taking of tribal lands has great historical dimension and significance for the tribes and their members, as well as present-day tangible consequences for the health, the well-being and advancement of the tribes.

S. 2118 is a fair and just fulfillment of the obligations undertaken, commitments and promises made by the United States to the tribes during the 19th century and as recently as 1967.

The tribes greatly appreciate the opportunity to appear before you here today and are grateful to the committee for the careful consideration of S. 2118.

Attached is a list of technical amendments to S. 2118 that I will not read, but which are for your information.

In conclusion, we would applause the administration's support of this bill and, again, thank you for your sincere efforts.

Mr. ANDREWS. Thank you very much, Mr. Chairman, for an excellent statement.

[Prepared statement of Mr. Hawkins appears in the appendix.]

Mr. ANDREWS. Next, we will hear from Carl Walking Eagle, who is representing Carl McKay. Carl Walking Eagle is on our Fort Totten Devil's Lake Sioux Tribal Council.

What happened to Carl? Did he get snowed in up there? I did not think McKay ever let a little bit of snow slow him down.

STATEMENT OF CARL MCKAY, CHAIRMAN, DEVILS LAKE SIOUX TRIBE, AS PRESENTED BY CARL WALKING EAGLE

Mr. WALKING EAGLE. Yes; well, I am appearing here for Carl McKay. I am the vice chairman of the Devils Lake Sioux Tribe.

Mr. ANDREWS. It is good to have you here.

Mr. WALKING EAGLE. Thank you. I have a statement here from Carl McKay, chairman of the Devils Lake Sioux Tribe.

Honorable Chairman of the Select Committee on Indian Affairs, I thank you for the opportunity to provide testimony in support of the passage of S. 2118.

As you are all well-aware, the Devils Lake Sioux Tribal Council has passed a resolution supporting the distribution of the remaining funds in Indian Claims Commission dockets numbered 142 and 359 to the governing bodies of the three affected tribes.

Our research indicates that the decision to set aside 25 percent of the funds awarded for the lineal descendants of the Sisseton-Wahpeton Sioux Tribe was the result of efforts by the Bureau of Indian Affairs.

It is the feeling of the members of the Devils Lake Sioux Tribe to allow the award of funds to lineal descendants would be of no benefit to members of a federally-recognized tribe. This is especially true in light of recent cutbacks of Federal funds.

It is the intent of the tribal council to utilize the funds for Federal program purposes. While the Tribe desires to pursue their goal of self-determination, startup and operating capital are needed for the tribe to pursue real economic growth. Without reservation-based economic growth, the concept of Indian self-determination is but a dream. In addition, Federal cutbacks are working a distinct hardship on gains made in improved health care. As a result, program funds to the tribe are a necessity.

In the interests of brevity, Senator, the Devils Lake Sioux Tribe Council would like you to consider the following:

First, the U.S. Congress and the Federal Government have a special relationship with members of federally-recognized tribes and not lineal descendants of such tribes. It is the tribal governments and members of those tribes that enjoy the special Federal relationship. Most recent legislative efforts have recognized this principle by incorporating a one-quarter degree blood requirement or membership in a federally-recognized tribe.

Second, the use of funds for program purposes is needed to offset recent and proposed Federal cutbacks in the Federal budget.

Third, these funds when utilized in conjunction with other Federal, state, or local funds could enhance real reservation economic growth.

Once again, I would like to thank you for the opportunity to make this statement and to solicit your support in the passage of S. 2118.

Carl McKay, Chairman.

Mr. ANDREWS. Thank you very much, Carl, for an excellent statement.

We will next hear from Leland Spotted Bird, who is the chairman of the Fort Peck Tribal Executive Board at Fort Peck.

It is good to have you here, Leland.

62-542 O - 86 - 2

STATEMENT OF LELAND SPOTTED BIRD, CHAIRMAN, FORT PECK TRIBAL EXECUTIVE BOARD

Mr. SPOTTED BIRD. Thank you, Mr. Chairman.

I do not have a prepared statement. The statement that was read by Mr. Hawkins covers most everything that I had planned to say. As far as the Fort Peck Sioux people are concerned, Sisseton-Wahpeton people at Fort Peck Reservation, they would like to have this bill passed due to all our Federal cutbacks like these other gentlemen have referred to.

The money would be greatly appreciated up there. We would put that into the economical development of the reservation.

I do not have too much to say at this time, but could answer a few questions, if you have any questions.

Mr. ANDREWS. Good. We will do that.

Mr. SPOTTED BIRD. Thank you.

Mr. ANDREWS. We appreciate your appearing here on behalf of your people, on behalf of this bill.

Let me get the questions, so that we can make a complete record and I would imagine that Russell Hawkins, as the lead-off witness, probably could answer most of them and if any of you do not agree with what Russell Hawkins says, speak up, because your silence is going to be interpreted as supporting what Chairman Hawkins says on behalf of the tribes.

Have the tribes made any effort to give notice to their respective reservation residents that this bill was being proposed?

Mr. HAWKINS. Yes, Mr. Chairman, we have. We have published this in our papers. We have addressed this at tribal council meetings, which are regularly scheduled the first Tuesday and Wednesday of every month.

And throughout the monthly district meetings within the seven districts on our particular reservation, so the people have been notified in a public paper. They have been notified at tribal council meetings and notified in other ways.

Mr. ANDREWS. And that has been true of all the tribes?

Mr. HAWKINS. Yes; it has, sir.

Mr. ANDREWS. How many newly-enrolled members of the respective tribes would be eligible to receive per capita payments if S. 2118 is enacted as presently written?

Mr. HAWKINS. We have visited all 3 of the tribes collectively, Mr. Chairman, and the number we have arrived at is approximately 25 individuals.

Mr. ANDREWS. Twenty-five individuals.

Mr. HAWKINS. Between the three tribes, yes.

Mr. ANDREWS. Would the tribes oppose an amendment to S. 2118 that would prohibit any per capita distribution?

Mr. HAWKINS. Yes; we would.

Mr. ANDREWS. Do the tribes have any specific plans for the use of these funds if the bill is enacted?

Mr. HAWKINS. We have some general plans but if this bill is passed, we would go back with specific plans, giving the tribal members and the respective government officials—tribal officials—the opportunity to address detailed and specific plans with our

planning departments, with input from our tribal members on a district level and at a council member level.

So we have general plans, but nothing specific.

Mr. ANDREWS. How were the percentages in the bill arrived at?

Mr. HIRSCH. These percentages were the exact percentages used in the 1972 legislation.

Mr. ANDREWS. So it is based on prior law.

Mr. HIRSCH. Yes; it is.

Mr. ANDREWS. Would it be possible for a lineal descendant to become enrolled, assuming he or she qualified, and participate in distribution after S. 2118 is enacted?

Mr. HIRSCH. Only if the individual was eligible for enrollment in 1972. And, again, we believe that to be 25 people between the 3 tribes.

Mr. ANDREWS. Well, we made a complete record with the support of the administration and with the unanimous support of the tribes involved. I think we are in pretty good shape.

Mr. HAWKINS. Mr. Chairman, I would like to make one last comment. We have original copies of 560 signatures that we obtained just last week of individuals in South Dakota supporting this piece of legislation and we have originals for all the committee members.

Mr. ANDREWS. If you could file that with the committee, we would appreciate it very much.

Mr. HAWKINS. OK. I think we did that. We will do that with Pete. I think there is one last parting comment that I would like to make, which is that the issue, we feel, is not of hardship. It is not of, well, these individuals should get this money.

It is an issue of basic fairness. The tribe lost the land. It was not individual land. The tribe lost the land. The court held for the tribe. The tribe should receive the money. That, I feel, is the basic issue. And, again, we can support the administration's recommendations and their support of the bill.

Thank you.

Mr. ANDREWS. You have made an excellent case, might I say, to all three of you. Your tribe should be extremely proud of you as spokespeople for them and we appreciate your condor and straightforwardness in helping us in making as strong a record as we can.

Well, let me indicate that a representative of Senator Abdnor's office is here. He has a statement regarding the bill which will be filed immediately following my statement and Senator Melcher may well want to put a statement in this record.

Yes.

Mr. HIRSCH. Mr. Chairman, one last comment on this, is that the tribes do support—as Mr. Hawkins indicated—the per capita, the small per capita for these 25 people that is in the bill, but the tribes also want to make it clear that they support the administration's recommendation which was heard for the first time today regarding the plan and the implementation of a plan for the use of these funds.

We think that is an excellent recommendation and the tribes definitely support that.

Mr. ANDREWS. Thank you very much for making that extremely clear.

Our next witnesses are Grady Renville, Martha Renville, and Robin Renville from Minneapolis, MN.

Let me point out that Senator Melcher would be here by now. He is now. I have got to go over and chair yet another hearing but because you have travelled a good long time, I am going to ask our staff director to follow through with your testimony so that we can get it in the record pending Senator Melcher's arrival and we appreciate your coming and I think we have made a good record so far. We are interested in hearing the testimony of all of you.

Will you proceed?

STATEMENT OF GRADY RENVILLE OF THE SISSETON-WAHPETON TRIBE

Mr. GRADY RENVILLE. Mr. Chairman, may I introduce myself, Grady Renville, my brother, Robin Renville, on my left and my sister, Martha Renville.

We are also here on behalf of our brother, Bruce Renville, who was unable to attend.

We hereby petition the Senate Select Committee on Indian Affairs to act favorably upon S. 2118.

In 1972, we were enrolled members of the Omaha Tribe of Nebraska. Today, we are enrolled members of the Sisseton-Wahpeton Sioux Tribe. Also, we are lineal descendants of Gabriel Renville, principal chief of the Sisseton-Wahpeton Sioux Tribe during the late 1800's and we are eligible to share in the Mississippi Sioux Judgment Award dated October 25, 1972.

Furthermore, let it be known that we are one-fourth degree Indian blood of the Seneca Cayuga Tribe of Oklahoma.

We bring these facts to your attention for one reason. Logically, all lineal descendants of the Sisseton-Wahpeton Sioux Tribe are offspring from intertribal and interracial mixing. Most if not all lineal descendants fall into one of two possible categories. They either lack the Federal requirement of one-fourth degree Indian blood, which precludes them from tribal membership in most federally recognized tribes or they are eligible for membership in one or more Indian tribes.

The absurdity of the situation is this: in our case, we have sufficient blood quantum to be enrolled in not one Indian tribe, but three tribes. We have already shared in the Omaha Tribe of Nebraska Award, 1961. Because of our tribal membership, we will share any benefits the Sisseton-Wahpeton Sioux Tribe will receive. And we stand to receive moneys from the lineal descendancy bill should S. 2118 not be enacted.

A very serious error in judgment was made by the Bureau of Indian Affairs in allowing the lineal descendancy portion of the Mississippi Sioux judgment to be enacted in the first place. This error is further evidenced by the fact that a substantial number of the lineal descendants are nonresidents of the reservation and have no social, political or economic ties with the reservation community.

I, Grady Renville, am employed in the finance department of the Sisseton-Wahpeton Sioux Tribe under the direct supervision of the

tribal treasurer. I am fully cognizant of the Sisseton-Wahpeton Sioux Tribe's immediate and long-term financial status.

Briefly, the tribe has outstanding obligations of over $5 million. For example, FMHA land acquisition loans, BIA revolving loans and numerous other obligations. Our only source of income is from the interest earned on the $1.5 million.

Our net cash assets consist of $1.5 million. Our only source of income is from the interest earned on the $1.5 million. The Tribal Land Lease Program, which amortizes the FMHA loan, will be experiencing serious difficulty since the program's viability and subsequent survival is directly tied to the local and national farm economy.

We are, technically speaking, bankrupt. We have more obligations than we have assets.

On the other hand, the Sisseton-Wahpeton Sioux Tribe recently underwent a $7 million audit and had less than one-tenth of 1 percent error. We are, from a financial management perspective, sound.

In addition to my membership and employment, I am a councilman with the Sisseton-Wahpeton Sioux Tribe. As a leader of this tribe, which has 80 percent unemployment, my primary interest is in the development of employment opportunities. The magnitude of our unemployment is staggering and is literally tearing apart the social and human fabric of our reservation.

Economic development is the primary and sole purpose for which the Sisseton-Wahpeton Tribe will use the funds from S. 2118.

Finally, as a certified lineal descendant of the Mississippi Sioux judgment, I urge the passage of S. 2118 which, to say the least, will significantly and favorably impact upon the very survival of the Sisseton-Wahpeton Sioux Tribe.

Thank you.

Mr. TAYLOR. Thank you very much, Grady.

[Prepared statement of Mr. Grady Renville appears in the appendix.]

Mr. TAYLOR. Martha, do you have anything you would like to add?

Ms. MARTHA RENVILLE. No; thank you.

Mr. TAYLOR. I received a letter the other day on our committee from Jeannette Salazar—who, I believe, is the mother of all of you—urging support for this legislation. I would like to make that a part of the record at this point. It has attachments indicating certificate of degree of Indian blood and your membership in the Sisseton-Wahpeton Tribe.

[Letter of Ms. Salazar appears in the appendix.]

Mr. TAYLOR. Let me just ask you, as members of the Sisseton-Wahpeton Tribe, you did not participate in the original distribution of funds in 1972, did you?

Mr. GRADY RENVILLE. No; we have not.

Mr. TAYLOR. So, under this legislation, you would be eligible to participate as a member of the tribe.

Mr. GRADY RENVILLE. If S. 2118 passed, yes.

Mr. TAYLOR. And if it does not pass, then you would participate as a lineal descendant.

Mr. GRADY RENVILLE. Yes; so, both ways, we win. But we are here, you know, to urge the pasage of it because we feel that, basically, as I said, that the Bureau of Indian Affairs made a serious error in judgment in allowing it to be enacted in the first place.

Mr. TAYLOR. All right. Thank you all very much.

Mr. GRADY RENVILLE. Thank you.

Mr. TAYLOR. We have one last panel of witnesses: Joyce Nelson from Portland, OR, and Josephine Zollinger from Eugene, OR. I do not know which of you would like to go first, so, please identify yourself for the record.

STATEMENT OF JOSEPHINE ZOLLINGER OF EUGENE, OR

Ms. ZOLLINGER. Joyce asked me to go first because she always has to have the last word.

Mr. Chairman, and members of the committee, my name is Josephine Zollinger and I am speaking in opposition to S. 2118.

I was born on the Fort Peck Indian Reservation, Poplar, MT, where I am an enrolled member. My father was five-eighths Fort Peck Sioux. My mother is five-eighths Sisseton-Wahpeton Sioux from Sisseton, SD.

The Assiniboine and Fort Peck Sioux enrollment ordinance of 1960 does not count other Indian blood for enrollment purposes so my mother's Sisseton-Wahpeton Sioux blood is not recognized to determine my Indian blood at Fort Peck.

Before the 1960 Assiniboine and Fort Peck Sioux enrollment ordinance, my blood degree at Fort Peck was listed as five-eighths. After 1960, my blood degree was reduced to five-sixteenths. As a result, my son is not enrolled at Fort Peck since his Fort Peck Sioux blood degree is less than one-quarter, although his total Sioux blood is five-sixteenths.

However, my son is a lineal descendant of Jacob and Jenny Thompson, my maternal grandparents, whose names are on the 1909 annuity rolls. He has the same Sisseton-Wahpeton ancestry as I do.

And at this time I would also like to include the written testimony of two sisters of mine who could not be here: Gloria Culbertson Smith and Karen Culbertson Harvey.

My sister, Gloria Culbertson Smith, has a son who also is eligible for the lineal descendancy bill. Her son is thirteen-sixteenths total Indian.

The Sisseton-Wahpeton Act of October 25, 1972, reads that section 201(b):

> The Secretary of the Interior shall prepare a roll of the lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and are living on the date of this Act whose names or the names of a lineal ancestor appear on any available record or rolls acceptable to the Secretary, and who are not members of any of the organized groups listed in subsection (a).

Section 202(a) apportioned the judgment money of "all other Sisseton and Wahpeton Sioux as 25.0225 percent of the total judgment award."

Section 202(c): "The funds allocated to all other Sisseton and Wahpeton Sioux as provided in subsection (a) shall be distributed per capita to the persons enrolled on the roll prepared by the Secretary pursuant to Section 201(b) of this Act."

Since my son is a lineal descendant of the Sisseton-Wahpeton Sioux Tribe, I requested an application form from the Aberdeen area office on behalf of my son who is a minor. I completed it and returned it before the filing deadline of November 1, 1973, for the lineal descendancy roll.

I have, in my possession, letters received from the Bureau of Indian Affairs Aberdeen area office responding to my letters of inquiry about my son's lineal descendancy eligibility since 1973.

Among the letters of correspondence are the following—and I would like these to be part of the record.

Mr. TAYLOR. We will make those part of the record at this place. I might say, Ms. Zollinger, that, as I look through your statement, it is fairly lengthy. It will be made a part of the record in its entirety, so if you would like to summarize——

Ms. ZOLLINGER. OK. When I received the letter of notification December 17, 1979, from the Bureau of Indian Affairs area director, William Benjamin, Aberdeen, SD that my son, William David Zollinger, was determined to be a descendant of the Sisseton-Wahpeton Band, and eligible to share in judgment funds under the provision of the act of October 25, 1972, I interpreted this letter of notification of eligibility as a final acknowledgment of my son's rightful inheritance to share in the judgment award as provided in the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25 1972.

This year, on Janaury 27, 1986, I wrote a letter to the Bureau of Indian Affairs superintendent, Aberdeen area office, and expressed my concern about a delegation from the Fort Peck Reservation traveling to Washington, DC, to lobby on behalf of S. 2118 which would take away the dedicated judgment funds from the Sisseton-Wahpeton lineal descendants.

I stated in my letter that I am concerned as to what the Bureau of Indian Affairs is doing on behalf of my son and others on the lineal descendancy roll if the proposed legislation to amend the 1972 act is introduced before Congress.

Almost 2 months later, I received a response to my letter, dated March 19, 1986, from the Aberdeen area office. It arrived in the mail on Saturday, March 22, 1986, and included a copy of the proposed S. 2118 and stated that a hearing on S. 2118 was scheduled for April 17.

On the following Tuesday, March 25, I called the tribal operations specialist Aberdeen area office, who signed the above letter.

Since the tribal operations specialist was not available, I spoke with another BIA employee in the same department. I asked specific information about the proposed hearing, such as time, place of hearing, et cetera. The BIA employee replied that no specific details were available.

I asked if the details could be obtained for me by their office calling the BIA office in Washington, DC. If so, I would appreciate receiving the information and a return call.

The BIA employee at the Aberdeen area office returned my call the next day. During my conversation, I asked if the Bureau of Indian Affairs had informed the lineal descendants of the hearing on S. 2118 which would deprive them of their rightful inheritance to these moneys and the answer was: "No the Bureau of Indian Affairs would inform the 2,000 lineal descendents only if S. 2118 is

approved. The 2,000 lineal descendants would then be informed that they would not be receiving the judgment award funds."

I replied: "Isn't that too late to inform the lineal descendants after S. 2118 has been passed?"

The response from the Bureau employee was that: "Maybe one of them will file a lawsuit."

I inquired about the possibility of receiving a list of the 2,000 lineal descendants. If possible, I would type a form letter myself and mail it to each of them. The answer was: "No, that is not possible."

I pressed further on the issue and asked: "Why couldn't the Aberdeen area office inform each of the 2,000 lineal descendants about S. 2118?"

The reply was that: "We don't have correct addresses for each of the lineal descendants because over the years some have moved."

I replied: "That is no excuse for the Bureau of Indian Affairs. You could send notices to the addresses that you have for each of the 2,000 lineal descendants. At least you will have made the effort of informing each lineal descendant of the proposed legislation. S. 2118, which will directly affect them."

The reply was that: "We don't have enough personnel to handle the communication to the 2,000 lineal descendants."

I deplore the fact that, although the Bureau of Indian Affairs has been responsible for the entire process of determining the eligible lineal descendancy roll, under the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25, 1972, the BIA has not deemed it necessary to inform the 2,000 lineal descendants of S. 2118 which could ultimately result in the revocation of their rightful Sisseton-Wahpeton inheritance to designated judgment funds appropriated by Congress October 25 1972.

I view this as a prime example of irresponsible bureaucracy by the Bureau of Indian Affairs. I contend that S. 2118 is the result of sneaky tactics by the governing bodies of the Sisseton-Wahpeton Sioux of South Dakota, the Devils Lake Sioux of North Dakota, and the Assiniboine and Fort Peck Sioux of Montana.

Now, "sneak" may seem like a harsh word to describe S. 2118 but when no attempt has been made, publicly or personally, to communicate and inform the 2,000 lineal descendants whose rightful inheritance to the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25, 1972 who will be directly affected by S. 2118, then I find no word more fitting than "sneaky."

I ask the governing bodies of the Sisseton-Wahpeton Sioux of South Dakota, the Devils Lake Sioux of North Dakota, and the Assiniboine and Fort Peck Sioux of Montana what right do you have to deny my son and others who have been declared eligible, lineal descendants by the Bureau of Indian Affairs of their rightful Sisseton-Wahpeton Sioux blood inheritance?

What right do you have to deny already-designated judgment funds, set aside for the 2,000 lineal descendants, appropriated by Congress 14 years ago under the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25, 1972?

Mr. Chairman and members of the committee, in summary, I offer the following statements for your consideration before a decision is made on S. 2118.

First, it is a known fact that the Sisseton-Wahpeton Sioux Tribe, Sisseton, SD, are paying the expenses for the Devils Lake Sioux, and the Assiniboine and Fort Peck Sioux to join them in S. 2118. The Sisseton-Wahpeton Sioux Tribal Council has been the driving force behind S. 2118 for they stand to gain the largest percentage of funds if S. 2118 is approved.

Second, in contrast, I am here at my own personal expense. It was a hardship for our family as my husband is retired and we still have three teenage children at home. However, when my immediate family and I learned that there was no opposition to speak against S. 2118, we felt obligated to testify on behalf of the 2,000 lineal descendants, the majority who are unaware of the hearing today or even of S. 2118.

Third, if the governing bodies of the three tribes are looking for funds to increase their tribal or committee budgets or further per capita payments, they ought not to be lusting after dedicated funds that have been set aside exclusively for the lineal descendants approved by Congress in 1972, 14 years ago.

Last Tuesday morning, April 15, 1986, I called the Assiniboine and Fort Peck Tribal Office to inquire about the fact that $40,000 of the Sisseton-Wahpeton set-aside claims money at Fort Peck is to be borrowed for the use of another legislative committee's expenses at Fort Peck—which is legal.

However, in my conversation with an elected tribal official, I understand that $225,000 is the principal amount that was set-aside about 14 years ago for the Assiniboine and Fort Peck Sisseton-Wahpeton Sioux. The principal has never been touched in 14 years. The interest on the principal is drawing interest itself. The $40,000 borrowed for another legislative committee's expense comes from the interest earned on the interest of the principal.

Fourth, the Sisseton-Wahpeton Sioux Act of October 25, 1972, was not the result of several meetings among the three tribes. It took many, many, many years of cooperative effort among the three tribes to work toward the passage of the Sisseton-Wahpeton Sioux Act of 1972.

Now, if the three tribes felt that the other lineal descendants that were not enrolled in any of the three tribes ought not to have been included in the judgment funds, then why didn't the three tribes omit the lineal descendants before the Sisseton-Wahpeton Sioux Act of October 25, 1972, was passed by Congress?

Fifth, the tribal members of the Sisseton-Wahpeton Sioux of South Dakota and the Devils Lake Sioux of North Dakota have already received their per capita judgment funds.

The Assiniboine and Fort Peck Sisseton-Wahpeton Sioux of Montana will be receiving a second and final per capita payment—of which I am a member.

The Bureau of Indian Affairs will then begin working toward a per capita payment to the 2,000 lineal descendants who were notified by the Bureau of Indian Affairs Aberdeen Area Office in 1979, 7 years ago, of their eligibility on the lineal descendancy roll.

It is long past overdue for the lineal descendants to be paid their per capita as designated under the act of October 25, 1972.

My sixth point, by failing to notify the lineal descendants of S. 2118, the Bureau of Indian Affairs in this case has neglected its primary purpose of trust responsibility to all Indians.

My final and last point, I strongly urge the committee to consider the years of time and money spent in determining the lineal descendancy roll and also, the time and work of the descendants to prove their Sisseton-Wahpeton lineal descendancy and also, their rights, their basic rights, as Indians to these funds that were allocated for their benefit.

Thank you. And I would also like to submit the written testimony of my two sisters, Gloria Culbertson Smith and Karen Culbertson Harvey at this time.

Mr. TAYLOR. If you would hand that to the reporter, we will make that part of the record.

[Prepared statement of Ms. Zollinger with attachments appears in the appendix.]

Mr. TAYLOR. Ms. Nelson, would you like to add some further comments?

STATEMENT OF JOYCE D. NELSON, PORTLAND, OR

Mrs. NELSON. My name is Joyce Nelson and I am present today to testify on behalf of my daughters, who are lineal descendants of the Sisseton-Wahpeton Sioux Tribe.

I am five-eights Sioux Indian. I am an enrolled member of the Fort Peck Indian Reservation. My husband is five-eights Sioux Indian and he is enrolled at the Pine Ridge Indian Reservation. Our two eldest children are also members of the Fort Peck Reservation.

In 1960, an enrollment ordinance was adopted by our tribal council, preventing our two youngest daughters—who are also five-eights Sioux—from being enrolled on the Fort Peck Indian Reservation.

In 1972, a bill was passed, setting aside 25 percent of a claim received by the Sisseton-Wahpeton, Devils Lake Sioux, and Assiniboine Fort Peck Sioux Tribes to be paid out to the lineal descendants of the Sisseton-Wahpeton Sioux Tribe.

The individuals responsible for this bill intended to assure these lineal descendants a monetary payment knowing, in their wisdom, that this may be the only payment they may receive in their lifetime. Their concern was for the welfare of their people.

Is there no end to what we will do for the all mighty dollar? It has been stated by many of our Indian leaders with great pride that we are not a materialistic culture. This may have been true at one time but the actions taken here today have proven our Indian leaders wrong.

The Bureau of Indian Affairs was negligent in not informing the lineal descendants of this hearing on S. 2118 which is trying to deny them of their designated portion of the Sisseton-Wahpeton claims money.

In summary, I say to those tribal individuals responsible for the makeup of this bill to hang their heads in shame for undermining other Sisseton-Wahpeton Sioux lineal descendants of their rightful Indian heritage.

I strongly oppose S. 2118 and appeal to you to do the same.

Thank you.

Mr. TAYLOR. I just have a couple of questions.

Ms. Zollinger—and, I suppose Mrs. Nelson, you are in the same position—what was the explanation, how did your blood degree get reduced from five-eighths to five-sixteenths as a result of the Fort Peck Sioux adopting an enrollment ordinance in 1960?

Ms. ZOLLINGER. The 1960 Fort Peck enrollment ordinance does not count Indian blood from other reservations, even though my mother's blood is Sioux. She is Sioux from Sisseton, SD but they will not recognize Sisseton-Wahpeton blood. They will not recognize any blood.

Mr. TAYLOR. They do not recognize it? What Sioux Tribe are they recognizing?

Ms. ZOLLINGER. They will only recognize Assiniboine and Fort Peck Sioux blood on that reserve. They will not recognize any other blood.

Mr. TAYLOR. Where did the Sioux that are at Fort Peck originally come from?

Ms. ZOLLINGER. From a lot of different tribes. There is all kinds of blood on the Assiniboine and Fort Peck Sioux Reservation. Those people who are of mixed blood from other reservations—as long as they were enrolled before 1960—they got on the rolls.

There are people on our reservation that are not even a quarter total Indian blood but they are on our enrollment rolls because they were enrolled before 1960. It was only after 1960 that this enrollment policy was enforced.

You know, I mentioned I have a sister who is married to a full blood. Their children are thirteen-sixteen degree of blood. She cannot enroll her son.

There are Indians in this lineal descendancy bill who are much more Indian than those people that are receiving the payments at Fort Peck and Devils Lake Sioux and Sisseton-Wahpeton.

Mr. TAYLOR. Mrs. Nelson, if I understood your testimony, your children are enrolled members at Pine Ridge. Is that correct?

Mrs. NELSON. No; my husband is from Pine Ridge. I have two children that are enrolled at Fort Peck. And the other two, because of the bill, Fort Peck does not recognize my husband's Indian blood because he is from another reservation. He is from Pine Ridge. So my children are five-eighths Sioux but they show me as five-sixteenths and my children as five-thirty-seconds. But in true blood, they are five-eighths Indian.

Mr. TAYLOR. But you do have two chidren that are enrolled at Fort Peck.

Mrs. NELSON. I have two that are enrolled at Fort Peck.

Mr. TAYLOR. And two that are not.

Mrs. NELSON. And two that are not.

Mr. TAYLOR. Ms. Zollinger, your child or children, are they enrolled in any tribe?

Ms. ZOLLINGER. No.

Mr. TAYLOR. Let me ask this. In your opinion, either one of you, should there be a point where there is a cutoff point on participation in these judgment funds on a blood quantum basis? Should there be a point?

Ms. ZOLLINGER. Well, the original Sisseton-Wahpeton Act of October 25, 1972—which is what we are discussing in relationship to S. 2118—has no blood degree or quantum in it. It says to only prove your lineal descendancy of Sisseton-Wahpeton Sioux blood. And we have done that.

My mother, her parents, my grandparents were on the annuity rolls and that is all we had to do, according to the original Sisseton-Wahpeton Act of October 25, 1972.

We have done that.

Mr. TAYLOR. I understand that, but my question is——

Mrs. NELSON. My response to your question is, yes, there should be a quarter degree. You should be able to prove your quarter-degree Indian blood and that is total blood.

Mr. TAYLOR. At that point, at the time of 1972, that was a question that was discussed. That is why I asked the question.

Mrs. NELSON. Mr. Chairman, I have one other point and when they were speaking of the moneys being given back to these tribes, not all Fort Peck Sioux are descendants of the Sisseton-Wahpeton. You have projects and programs that will include only Sisseton-Wahpeton. That may be something our delegate would like to answer, since he is from Fort Peck.

Mr. TAYLOR. I think we have a question from Virginia Boylan.

Ms. BOYLAN. What you just said relates to the question I have. When the per capita's were made at Fort Peck, were they made to all Sioux members at Fort Peck or to only those Sioux members who were of proven Sisseton-Wahpeton descendancy?

Ms. ZOLLINGER. Those Sioux members who could prove their Sisseton-Wahpeton lineal descendancy.

Ms. BOYLAN. From the 1909 roll.

Ms. ZOLLINGER. That is right.

Mr. TAYLOR. I do not have any further questions. If either Bert Hirsch or Leland Spotted Bird would like to respond to the point you have just made, we would be happy to receive testimony.

Mr. Spotted Bird.

Mr. SPOTTED BIRD. Would you repeat the question, please?

Mr. TAYLOR. Virginia, you pose it.

Ms. BOYLAN. Basically, the funds that you would get for programs under this bill would go to the Sioux portion of the Fort Peck Assiniboine Sioux Tribe. Would the programs be directed to all the Sioux or only those who could prove lineal Sisseton-Wahpeton descendance?

Mr. SPOTTED BIRD. Prior to 1972, a survey was taken and the Sioux people at Fort Peck Reservation that could prove their lineal descendancy—and I believe they used that there 1909 annuity roll—were all—we have a separate enrollment for them, Sisseton-Wahpeton people on the reservation. That roll would be used for the eligibility of people on the program uses so the money will be only used for people that are on that Sisseton-Wahpeton payout roll of 1972.

Ms. BOYLAN. That sort of defeats the whole objective of the bill, which is to get money back to tribes to run programs for members.

Mr. SPOTTED BIRD. You have got to remember, we have got two tribes. We have got the Assiniboine and we have got the Sioux and as far as the Sioux are concerned, we have got four bands of Sioux

up there. We have got Hunkpapa and we have got the Yankonai and we have got the Sisseton-Wahpeton and we have got the Tetona. We have got four bands up there. But most of these people, there are 3,306 that received that payment in 1972 and those people are eligible for these programs.

Mr. HIRSCH. Let me add to this. I think there is a misunderstanding here as to what Chairman Spotted Bird is saying. We are dealing with a Sisseton-Wahpeton judgment distribution. The judgment was to the Sisseton-Wahpeton Tribe, not to anybody else. So, yes, the money will be used for programs. But the Sisseton-Wahpeton Sioux at Fort Peck have the sole right to determine what those programs ought to be and to whom they should apply.

This is their judgment. It is not anybody else's judgment. They prosecuted it. They litigated it. They got it. It is their judgment.

Ms. BOYLAN. But your answer then is that it is a lineal judgment. It is not necessarily a tribal judgment.

Mr. HIRSCH. No; it is a tribal judgment.

Ms. BOYLAN. At Fort Peck, where there is the Fort Peck tribal community of the Assiniboine and Sioux Tribes, you can separate the whole Sioux from the whole Assiniboine because they have done that on the reservation.

Mr. SPOTTED BIRD. Yes; we have.

Ms. BOYLAN. But I think you may be missing the point I am making and that is, that you are stating that it is a lineal descendancy question. At the same time, you are saying that some Sisseton-Wahpeton lineal descendants who do not happen to be members of a particular tribe should be ineligible simply because they are not tribal members.

Mr. HIRSCH. No; that is not what I am saying at all.

Ms. BOYLAN. Well, that is the gist of the bill. That is the way I read it.

Mr. HIRSCH. No; it is not a lineal descendancy question at all—unless you want to take the position that every single judgment that the Congress approves funds for is a lineal descendancy judgment in that same sense. It is not. It is a tribal judgment. It goes to the tribe. The tribe, as a collective entity—the Sisseton-Wahpeton Sioux, I am talking about—this is like many other reservations, where you have more than one tribe on the same reservation.

Ms. BOYLAN. Are you saying that within the Sioux Tribe at Fort Peck, where there are four bands, each one of them is considered a separate tribe?

Mr. HIRSCH. There is a Sisseton-Wahpeton Sioux Council at Fort Peck. They have a separate council. They have had for many years. They act independently, just as many other tribes that have confederated situations around the country or united situations. They have their own council. They do their own thing. There is nothing wrong with that. This is standard operating procedure for many reservations.

Ms. BOYLAN. I have been working for the Indian Affairs Committee since 1979. This is the first time I have ever heard anything like that. Thank you.

Mr. TAYLOR. Are there any articles of incorporation or governing documents for the Sisseton-Wahpeton Sioux Council at Fort Peck?

Mr. SPOTTED BIRD. I did not bring any. I did not know there was going to be a question of our council, so I did not bring any, but I could send you a copy.

Mr. TAYLOR. We will hold the record open for submission on that.

[Documents of separate council appears in the appendix.]

Mr. TAYLOR. Mr. Spotted Bird, I would have a question. Has your council contemplated what sort of development program you might put together—tribal program?

Mr. SPOTTED BIRD. Not at the present time, but we are—as soon as we get home—are setting up committees to develop or do feasibility studies on what programs will be more or less of benefit to people on the reservation—the Sisseton-Wahpeton people of that reservation.

Mr. TAYLOR. I have no further questions.

Thank you very much. I do not think we need any further amplification of the record. I think we have got sufficient.

Mr. Hirsch.

Mr. HIRSCH. Yes; we would like to submit for the record—we have it available and we will do it right now—as part of Mr. Hawkins' testimony on behalf of himself, Mr. McKay and Mr. Spotted Bird, a September 18, 1985 letter to President Reagan from the Governor of South Dakota, supporting this legislation and so we would like to attach this as an exhibit to Mr. Hawkins' statement.

Mr. TAYLOR. We will make it part of the record at that point.

Mr. HIRSCH. Thank you.

Mr. TAYLOR. That concludes our witness list for this morning. The committee will stand adjourned.

We will keep the record open for 2 weeks for further submissions.

Thank you.

[Whereupon, at 11:17 a.m., the committee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 2118, A BILL "TO PROVIDE FOR THE DISTRIBUTION OF FUNDS APPROPRIATED TO PAY A JUDGMENT AWARDED TO THE SISSETON AND WAHPETON TRIBES OF SIOUX INDIANS IN INDIAN CLAIMS COMMISSION DOCKETS NUMBERED 142 AND 359, AND FOR OTHER PURPOSES".

April 17, 1986

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss with you S. 2118, a bill to distribute judgment funds awarded to the Sisseton and Wahpeton Tribes of Sioux Indians.

Title II of the Act of October 25, 1972 (25 U.S.C. 1300d) provided for the distribution of certain judgment funds awarded to the Sisseton-Wahpeton Sioux Tribe of South Dakota, the Devils Lake Sioux Tribe of North Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, and tne lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were not enrolled with any tribe. Funds designated for per capita payments have been distributed to members of the various tribes but not to the lineal descendants. 1,935 applicants have been determined eligible and 292 of the applicants that have been determined ineligible have filed appeals of which 255 have not been finalized.

S. 2118 authorizes the distribution of the lineal descendants share to the govering bodies of the effected tribes to be used under plans developed by the tribes.

We support enactment of S. 2118 if amended to bar the tribe from providing per capita payments.

Although we recognize that approximately 2,000 lineal descendants will view the bill and our position as unfair, we are committed to the concept that maintaining judgment funds as a capital pool for individual tribes to invest enhances the objective of tribal self-determination and reflects the basic intent of Congress in the Act of October 19, 1973 (25 U.S.C. 1401 et seq.).

In February of this year the amount to which S. 2118 applies totaled $6,028,244. Although that amount distributed per capita would provide about $3000 to each of the eligible descendants, our experience tells us that individual payments do not generally have lasting beneficial affects. In line with this, we recommend that the bill be amended to bar any per capita payments of the funds.

We know that this Committee has questioned the legal status of the rights that may have vested in the lineal descendants and whether a Fifth Amendment taking issue is raised by this bill. We do not believe that any rights have vested and understand that the opinion of the Department of Justice will support this view.

This concludes my prepared statement. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF RUSSELL HAWKINS

Mr. Chairman and members of the Committee, we are Russell Hawkins, Chairman of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation, North Dakota and South Dakota, Carl McKay, Chairman of the Devils Lake Sioux Tribe of the Ft. Totten Indian Reservation, North Dakota, and Leland Spotted Bird, Chairman of the Ft. Peck Sisseton-Wahpeton Sioux Council of the Ft. Peck Indian Reservation, Montana.

Enactment of S. 2118 is vital to the future development and progress of the three Sisseton-Wahpeton Sioux organized tribal entities and their approximately 20,000 enrolled members. The legislation would amend P.L. 92-555, enacted in 1972, to eliminate any per capita distribution to Sisseton-Wahpeton Sioux lineal descendants of funds appropriated in satisfaction of a 1967 judgment rendered by the Indian Claims Commission in favor of the Tribes. As the Committee knows, none of the funds set aside for lineal descendants have been distributed and their value now exceeds $6 million. If enacted, S. 2118 would result in the distribution of these funds directly to the three Sisseton-Wahpeton Sioux tribal governments for tribal programs and projects that would significantly and directly improve the social and economic circumstances of all tribal members.

Review of the history of the Sisseton-Wahpeton Sioux claims and their disposition in the Indian Claims Commission underscores the justness of S. 2118 and the injustice of P.L. 92-555.

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More than 35 years ago, the Sisseton-Wahpeton Sioux Tribe and the Devils Lake Sioux Tribe petitioned the Indian Claims Commission for a judgment against the United States for the loss, more than 100 years ago, of lands to which the Sisseton-Wahpeton Sioux held recognized treaty title. At the time of the Tribe's possession of these lands, no individual member of the Tribe held title to any of the lands. Acknowledging this fact, the Commission, in a 1962 order, determined that the petitioning tribes were solely entitled to litigate the tribal claims on behalf of its members "and all other descendants of the original bands of Sisseton and Wahpeton Sioux." 10 Ind.Cl.Comm. 137, 180 (January 12, 1962).

The two petitioning tribes alone prosecuted the Sisseton-Wahpeton Sioux claims before the Commission. Before the entry of final judgment, the two petitioning tribes consented to the joinder of the Ft. Peck Sisseton-Wahpeton Sioux as a party -petitioner. Lineal descendants did not seek to nor did they participate in the prosecution of these claims.

The final judgment of the Commission, entered on July 25, 1967, concluded that it was the Sisseton-Wahpeton Sioux Tribe as an entity that had been wronged by the United States for it was the Tribe, as an entity, that had owned the land at issue in the litigation. Not surprisingly, the Commission entered judgment in favor of the Tribes. Nowhere

in the lengthy proceedings before the Commission did the Commission address or suggest that lineal descendants or individual members of the Tribes had any interest in the claims separate from the interest of the Tribes as entities. Nothing in the judgment of the Commission makes any award to lineal descendants. The award is solely to the Tribes. This award was agreed to by the United States in a stipulated settlement approved by the Commission.

Notwithstanding the settlement negotiated by the United States with the Tribes and the Commission judgment, the Congress chose in 1972 to allocate 25% of the Tribe's award to lineal descendants, many of whose ancestors had severed their tribal relations with the Sisseton-Wahpeton Sioux more than 100 years ago and who themselves maintain no current relations with the Tribes. We believe it to be unprecedented for the Congress, as it did in 1972, to award any part of a judgment against the United States to persons who had no participatory role in the litigation that brought about the judgment and whose interests, if any, were not addressed by or included in the judgment.

In sum, the 1972 enactment is historically and legally incorrect and unsound. We strongly believe it is immoral and unfair as well. Essentially, the claims of the Sisseton-Wahpeton Sioux have not yet been settled. S. 2118 would

fairly and appropriately settle these claims in the manner contemplated by the Commission's judgment and the United States' settlement.

In these times of severe federal budget cutbacks, it is evident that an infusion of $6 million into tribal programs and projects would facilitate the ability of the Tribes to maintain essential services to tribal members and to develop long-term projects that would economically and socially benefit the entire tribal community for years to come. The reallocation of these funds to the Tribes would clearly further the national policies of tribal self-determination and economic development.

In addition to eliminating the lineal descendancy distribution, S. 2118 contains two other important provisions. One would permit a per capita distribution to be made to tribal members who were eligible for the per capita payment made to such members under P.L. 92-555 but who did not receive such a payment. The Tribes believe that such persons number no more than 25. Payments to these people, therefore, would, in the aggregate, amount to approximately $10,000. The Tribes believe that these people are entitled to be treated equally with all other tribal members.

Also, S. 2118 provides that any plan for the use and distribution of the funds to be allocated to the Tribes would be governed by the applicable provisions of the general law governing such matters, 25 U.S.C. §1401 et seq.

Again, the Tribes would emphasize that receiving full recompense for the taking of tribal lands has great historical dimension and significance for the Tribes and their members, as well as present-day tangible consequence for the health, well-being and advancement of the Tribes and their members. S. 2118 is a fair and just fulfillment of obligations undertaken and commitments and promises made by the United States to the Tribes during the 19th century and as recently as 1967.

The Tribes greatly appreciate the opportunity to appear before the Committee today and are grateful to the Committee for its careful consideration of S. 2118.

Attached is a list of technical amendments to S. 2118 recommended by the Tribes upon further review of the measure.

Thank you.

AMENDMENTS

The Tribes request the following amendments to S. 2118:

1. On page 3, line 3 should be amended to insert after the word "with" the words "the applicable provisions of." This is a technical amendment made necessary because not all of the provisions of 25 U.S.C. 1401 apply to the provisions of S. 2118. In particular, since S. 2118 essentially eliminates any per capita distribution, subsection (b)(2), (3), (4) and (5) do not apply to S. 2118.

2. On page 3, line 24 should be amended to change "entitled" to "eligible." This is a technical amendment. Persons may be "eligible" for but are not "entitled" to enrollment as tribal members.

3. On page 4, lines 11-12 should be amended to delete the reference to "section 5(a) of the Act of October 19, 1973 (87 Stat. 467)" and to replace this reference with a reference to "section 3(a) of the Act of January 12, 1983 (96 Stat. 2513)." This is a technical amendment that brings S. 2118 into conformity with the applicable law pertaining to the legislative veto of an Executive Branch action.

4. On page 4, line 12 should be amended to change "5" to "3", to delete "either House adopts", to insert after "(a)", the words "Congress enacts", and to insert after the word "a", the word "joint". These are technical

amendments all necessary to bring S. 2118 into conformity with applicable law on the legislative veto of Executive Branch actions.

5. On page 4, line 14 should be amended to change "5" to "3". This is a technical amendment necessitated by the change in statutory reference proposed for page 4, lines 13-12.

Office of the Governor
STATE OF SOUTH DAKOTA

[redacted]

[redacted]

The Honorable Ronald Reagan
The President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Re: Sisseton-Wahpeton Sioux Tribe's legislative proposal for redistribution of lineal descendency funds provided in PL 92-556

Dear Mr. President:

Our attention recently was called to the Sisseton-Wahpeton Sioux Tribe's legislative remedy for redistribution of lineal descendency funds provided pursuant to PL 92-556, commonly known as the Mississippi Sioux Claim.

Since 1972, the Bureau of Indian Affairs has failed to implement provisions of the claim award as it pertains to the lineal descendent. Owing to this thirteen year delay, interest monies have accumulated to such an extent that approximately 1800 lineal descendents, who either are enrolled in other tribes and receive benefits from their own tribes or are legally non-Indians, are to be provided with a per capita payment of over $3,000 apiece, which is 6 to 10 times more than the amount received by the Sisseton-Wahpeton enrollees in three Sisseton-Wahpeton Tribes in South Dakota, North Dakota, and Montana.

Our own Sisseton-Wahpeton Sioux Tribe has drafted and prepared a bill that would remedy this situation by providing for the redistribution of funds for lineal descendents to the three Sisseton-Wahpeton Tribes of Sisseton, South Dakota; Devils Lake, North Dakota; and Fort Peck, Montana. All three tribes are in concurrence with this legislative remedy.

Accordingly, I urge your support of this bill.

Sincerely,

[redacted]

[redacted]

Prepared
Statement of Carl R. McKay
Chairman of Devils Lake Sioux Tribe

Honorable Chairman of the Select Committee on Indian Affairs, I thank you for the opportunity to provide testimony in support of the passage of S.2118. As you are well aware, the Tribal Council of the Devils Lake Sioux Tribe has passed a resolution supporting the distribution of the remaining funds in Indian Claim Commission Dockets 142 and 359 to the governing bodies of the three affected tribes.

Our research indicates that the decision to set aside twenty-five percent of the funds awarded for lineal descendents of the Sisseton-Wahpeton Sioux Tribe was a result of efforts by the Bureau of Indian Affairs. It is the feeling of the members of the Devils Lake Sioux Tribe that to allow the award of funds to lineal descendents would be of no benefit to members of a federally recognized tribe. This is especially true in light of recent cutbacks in the federal budget.

It is the intent of the Tribal Council to utilize the funds for tribal program purposes. While the tribe desires to pursue their goal of self-determination, start up and operating capital are needed for the tribe to pursue real economic growth. Without reservation based economic growth, the concept of Indian self-determination is but a dream. In addition, federal cutbacks are working a distinct hardship on gains made in improved health care. As a result, program funds to the tribe are a necessity.

In the interests of brevity , Senator, the Devils Lake Sioux Tribal Council would like you to consider the following:

1.) The U.S. Congress and the Federal Government have a special relationship with members of federally-recognized tribes and not lineal

descendants of such tribes. It is the tribal governments and members of those tribes that enjoy the special federal relationship. Most recent legislative efforts have recognized this principle by incorporating a 1/4 degree blood requirement or membership in a federally recognized tribe.

2.) The use of funds for program purposes is needed to offset recent and proposed federal cutbacks in the federal budget.

3.) These funds when utilized in conjunction with other federal, state, or local funds could enhance real reservation economic growth.

Once again, I would like to thank you for the opportunity to make this statement and to solicit your support in the passage of S.2118.

Carl R. McKay
Chairman

PREPARED STATEMENT OF GRADY RENVILLE

I hereby petition the Senate Select Committee on Indian Affairs to act favorably upon Senate Bill 2118.

In 1972, I was an enrolled member of the Omaha Tribe of Nebraska. Today, I am an enrolled member of the Sisseton Wahpeton Sioux Tribe. Also, I am a lineal desendent of Gabriel Renville, Principle Chief of the Sisseton Wahpeton Sioux Tribe during the late 1800's, and eligible to share in the Mississippi Sioux Judgement Award (86 Stat. 1168) October 25, 1972.

Furthermore, let it be known that I am 1/4 degree Indian blood of the Seneca Cayuga of Oklahoma Tribe. I bring these facts to your attention for one reason. Logically , all lineal descendents of the Sisseton Wahpeton Sioux Tribe are offspring from inter-tribal and inter-racial mixing. Most, if not all lineal descendents fall into one of two possible categories: They either lack the federal requirement of 1/4 degree Indian blood which precludes them from tribal membership in most federally recognized tribes, or, they are eligible for membership in one or more Indian tribe. The absurdity of the situation is that, in my case, I have sufficient blood quantum to be enrolled in not one Indian tribe but three tribes!

A VERY SERIOUS ERROR IN JUDGEMENT WAS MADE BY THE BUREAU OF INDIAN AFFAIRS IN ALLOWING THE LINEAL DESCENDENCY PORTION OF THE MISSISSIPPI SIOUX JUDGEMENT TO BE ENACTED.

The error is further evidenced by the fact that a substantial number of the lineal descendents are non-residents of the reservation and have no social, political, or economic ties with the reservation community.

I am employed in the finance department of the Sisseton Wahpeton Sioux Tribe, under the direct supervison of the tribal treasurer. I am fully cognizant of the Sisseton Wahpeton Sioux Tribe's immediate and long term financial status. Briefly, the tribe

has outstanding obligations of over five million dollars, e.g., FmHA Land Acquisition Loans; BIA Revolving Loans; and numerous other obligations. Our current net cash assets consists of one and half million dollars. Our only source of income is from the interest earned on the one and half million dollars. The tribal Land Lease Program (which amortizes the FmHA loans) will be experiencing serious difficulty since the programs viability and subsequent survival is directly tied to the local and national farm economy. We are technically bankrupt. We have more obligations than assets. On the other hand, the Sisseton Wahpeton Sioux Tribe recently underwent a seven million dollar audit and had less than one-tenth of one percent error. We are from a financial management perspective sound.

In addition to my membership and employment I am a Councilman with the Sisseton Wahpeton Sioux Tribe. As a leader of this tribe, which has 80% unemployment, my primary interest is in development of employment opportunities. The magnitude of our unemployment is staggering and is literally tearing apart the social and human fabric of our reservation society.

ECONOMIC DEVELOPMENT IS THE PRIMARY AND SOLE PURPOSE FOR WHICH THE SISSETON WAHPETON SIOUX TRIBE WILL USE THE FUNDS FROM SENATE BILL 2118.

Finally, as a certified lineal descendent of the Mississippi Sioux Judgement I urge the passage of Senate Bill 2113, which, to say the least, will significantly and favorably impact upon the very survival of the Sisseton Wahpeton Sioux Tribe. Thank you.

Grady W. Renville

PREPARED STATEMENT OF JOSEPHINE ZOLLINGER

Mr. Chairman and Members of the Committee:

My name is Josephine Zollinger, and I am speaking in opposition to Senate Bill 2118.

I was born on the Fort Peck Indian Reservation, Poplar, Montana where I am an enrolled member.

My father was 5/8ths Fort Peck Sioux. My mother is 5/8ths Sisseton-Wahpeton Sioux from Sisseton, South Dakota.

The Assiniboine and Fort Peck Sioux Enrollment Ordinance of 1960 does not count other Indian blood for enrollment purposes, so my mother's Sisseton-Wahpeton Sioux blood is not recognized to determine my Indian blood at Ft. Peck. Before the 1960 Assiniboine and Fort Peck Sioux Enrollment Ordinance, my blood degree at Fort Peck was listed as 5/8ths. After 1960 my blood degree was reduced to 5/16ths. As a result, my son is not enrolled at Fort Peck since his Fort Peck Sioux blood degree is less than 1/4th although his total Sioux blood is 5/16ths. However, my son is a lineal descendant of Jacob and Jennie Thompson, my maternal grandparents whose names are on the 1909 Annuity Rolls.

The Sisseton-Wahpeton Act of October 25, 1972 (86 Stat. 1168) reads that:

"Section 201 (b) The Secretary of the Interior shall prepare a roll of the lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and are living on the date of this Act whose names or the names of a lineal ancestor appears on any available records and rolls acceptable to the Secretary, and who are not members of any of the organized groups listed in subsection (a). Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota. The Secretary's determination on all applications for enrollment shall be final."

Section 202 (a) apportioned the judgment money of "all other Sisseton and Wahpeton Sioux as 25.0225 per cent of the total judgment award.

" " (c) "The funds allocated to all other Sisseton and Wahpeton Sioux, as provided in subsection (a), shall be distributed per capita to the persons enrolled on the roll prepared by the Secretary pursuant to Section 201 (b) of this Act."

Since my son is a lineal descendant of the Sisseton-Wahpeton Sioux Tribe, I requested an application form from the Aberdeen Area Office on behalf of my son who is a minor. I completed it and returned it before the filing deadline of November 1, 1973 for the "lineal descendancy roll."

I have, in my possession, letters received from the Bureau of Indian Affairs Aberdeen Area Office responding to my letters of inquiry about my son's lineal descendancy eligibility since 1973.

Among the letters of correspondence are the following:

dates of letters	received from B.I.A. Aberdeen Area Office
November 24, 1978 -	. . . "After a review of our records, we find that your son, William David Zollinger is not a member of the Assiniboine and Sioux Tribes, but is a lineal descendant of the Mississippi Sioux Tribe and has a timely filed application in our office for the "lineal descendancy roll." He, therefore, no doubt will be eligible for the lineal descendancy roll."
December 17, 1979 -	A letter of notification received from the B.I.A. Area Director, William Benjamin, Aberdeen, South Dakota, that my son's "application for enrollment as a lineal descendant of the Mdewakanton- Wahpakoota and Sisseton-Wahpeton Bands of Sioux to share in the distribution of the tribes judgment funds under the provisions of the Act of October 25, 1972 (86 Stat. 1168) has been appropriately reviewed. You have been determined to be a descendant of the Sisseton-Wahpeton Band and eligible to share in above funds."
March 30, 1981 -	letter stating that "your son, William has been determined eligible as a lineal descendant; however, since he is a minor, his share will be deposited into an Individual Indian Money Account."

When I received the letter of notification December 17, 1979 from the B.I.A. Area Director, William Benjamin, Aberdeen, South Dakota that my son, William David Zollinger was determined to be a descendant of the Sisseton-Wahpeton Band and eligible to share in judgment funds under the provisions of the Act of October 25, 1972. I interpreted this letter of notification of eligibility as a final acknowledgement of my son's rightful inheritance to share in the judgment award as provided in the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25, 1972 (86 Stat. 1168).

This year, on January 27, 1986 I wrote a letter to the B.I.A. Superintendent, Aberdeen Area Office and expressed my concern about a delegation from the Fort Peck Reservation traveling to Washington D. C. to lobby on behalf of the proposed legislation S. 2118 which would take away the dedicated judgment funds from the Sisseton Wahpeton lineal descendants. I stated in my letter that "I am concerned as to what the Bureau of Indian Affairs is doing on behalf of my son and others on the "lineal descendancy roll" if the proposed legislation to amend the 1972 Act is introduced before Congress?"

Almost two months later, I received a response to my letter dated March 19, 1986 from the Aberdeen Area Office. It arrived in the mail on Saturday, March 22, 1986, and included a copy of the proposed bill S. 2118 and stated that a hearing on S. 2118 was scheduled for April 17, 1986.

On the following Tuesday, March 25, I called the Tribal Operations Specialist, Aberdeen Area Office, who signed the above letter. Since the Tribal Operations Specialist was not available, I spoke with another Bureau of Indian Affairs employee in the same department. I asked specific information about the proposed hearings such as time, place of hearing, etc. The B.I.A. employee replied that no specific details were available. I asked if the details could be obtained for me by their office calling the B.I.A. office in Washington, D. C.? If so, I would appreciate receiving the information and a return call.

The B.I.A. employee at the Aberdeen Area Office returned my call the next day. During my conversation, I asked if "the B.I.A. had informed the lineal descendants of the hearing on S. 2118 which would deprive them of their rightful inheritance to these monies?" The answer was "no." "The B.I.A. would inform the 2,000 lineal descendants only if S. 2118 is approved. The 2,000 lineal descendants would then be informed that they would not be receiving the judgment award funds."

I replied, "Isn't that too late to inform the lineal descendants after S. 2118 has been passed?" The response from the B.I.A. employee was that "maybe one of them will file a lawsuit."

I inquired about the possibility of receiving a list of the 2,000 lineal descendants. If possible, I would type a form letter myself and mail it to each of them. The answer was "no. That's not possible."

I pressed further on the issue and asked "why couldn't the Aberdeen Area Office inform each of the 2,000 lineal descendants about S. 2118. The reply was that "We don't have correct addresses for each of the lineal descendants because over the years, some have moved." I replied, "That's no excuse for the B.I.A. You could send notices to the addresses that you have for each of the 2,000 lineal descendants. At least, you will have made the effort of informing each lineal descendant of the proposed legislation S. 2118 which will directly affect them."

The reply was that "We don't have enough personnel to handle the communication to the 2,000 lineal descendants.

I deplore the fact that although the Bureau of Indian Affairs has been responsible for the entire process of determining the eligible "lineal descendancy roll" under the Sisseton-Wahpeton Mississippi Sioux Tribe Act of October 25, 1972, the Bureau of Indian Affairs has not deemed it necessary to inform the 2,000 lineal descendants of S. 2118 which could ultimately result in the revocation of their rightful Sisseton-Wahpeton inheritance to designated judgment funds appropriated by Congress, October 25, 1972.

I view this as a prime example of "irresponsible bureaucracy" by the Bureau of Indian Affairs.

I contend that S. 2118 is the result of "sneaky" tactics by the governing bodies of the Sisseton-Wahpeton Sioux of South Dakota, Devil's Lake Sioux of North Dakota, and the Assiniboine and Fort Peck Sioux of Montana.

"Sneaky" may seem like a harsh word to describe S. 2118, but when no attempt has been made, publicly or personally, to communicate and inform the 2,000 lineal descendants whose rightful inheritance to the Sisseton-Wahpeton Mississippi Sioux Tribe, Act of October 25, 1972 (86 Stat. 1168) who will be directly affected by S. Bill 2118, -- then I find no word more fitting than "sneaky."

I ask the governing bodies of the Sisseton-Wahpeton Sioux of South Dakota, Devil's Lake Sioux of North Dakota, and the Assiniboine and Fort Peck Sioux of Montana,

a) What "right" do you have to deny my son and others who have been declared "eligible lineal descendants" by the Bureau of Indian Affairs of their rightful Sisseton-Wahpeton Sioux blood inheritance?

b) What "right" do you have to deny already "designated judgment funds" set aside for the 2,000 lineal descendants appropriated by Congress 14 years ago under the Sisseton-Wahpeton Mississippi Sioux Tribe, Act of October 25, 1972?

Last Tuesday morning, April 15, 1986, I called the Assiniboine and Fort Peck Tribal Office to inquire about the fact that $40,000 of the Sisseton-Wahpeton set-aside claims money is to be borrowed for the use of another legislative committee's expenses which is legal. However, in my conversation with an elected tribal official, I understand that $225,000 is the principal amount that was set aside about 14 years ago for the Assiniboine and Fort Peck Sisseton-Wahpeton Sioux. The "principal" has never been touched. The "interest" on the "principal" is drawing "interest" itself.

Mr. Chairman and Members of the Committee:

In summary, I offer the following statements for your consideration before a decision is made on Senate Bill 2118:

1) It is a known fact that the Sisseton-Wahpeton Sioux Tribe, Sisseton, South Dakota, are paying the expenses for the Devil's Lake Sioux and the Assiniboine and Fort Peck Sioux to join them in S. 2118. The Sisseton-Wahpeton Sioux Tribal Council has been the driving force behind S. 2118 for they stand to gain the largest percentage of funds if S. 2118 is approved.

2) In contrast, I am here at my own personal expense. It was a hardship for our family as my husband is retired, and we still have three teenage children at home. However, when my immediate family and I learned that there was no opposition to speak against S. 2118, we felt obligated to testify on behalf of the 2,000 lineal descendants--the majority who are unaware of the hearing today or of Senate Bill 2118.

3) If the governing bodies of the three tribes are looking for funds to increase their tribal or committee budgets or further per capita payments, they ought not to be "lusting after dedicated funds" that have been set aside exclusively for the lineal descendants approved by Congress in 1972 - 14 years ago.

4) The Sisseton Wahpeton Sioux Act of October 25, 1972 was not the result of several meetings among the three tribes. It took many many years of cooperative effort among the three tribes to work towards the passage of the Sisseton-Wahpeton Sioux Act of 1972. If the three tribes felt that the other lineal descendants (not enrolled with any of the three tribes) ought not to have been included in the judgment funds, -- then why didn't the three tribes omit the lineal descendants before the Sisseton-Wahpeton Sioux Act of October 25, 1972 was passed by Congress?

5) The tribal members of the Sisseton-Wahpeton Sioux of South Dakota and the Devil's Lake Sioux of North Dakota have already received their per capita judgment funds from the Sisseton-Wahpeton Act of October 25, 1972. The Assiniboine and Fort Peck Sisseton-Wahpeton Sioux of Montana will be receiving a second and final per capita payment. The Bureau of Indian Affairs will then begin working towards a per capita payment to the 2,000 lineal descendants who were notified by the B.I.A. Aberdeen Area Office in 1979 -- seven years ago -- of their eligibility on the "lineal descendancy roll." It's long past overdue for the lineal descendants to be paid their per capita as designated under the Act of October 25, 1972.

6) By failing to notify the "lineal descendants" of S. 2118, the Bureau of Indian Affairs, in this case, has neglected its primary purpose of "trust" responsibility.

7) I strongly urge the members of the Committee to consider the years of time and money spent in determining the "lineal descendancy roll", and also the time and work of the descendants to prove their Sisseton-Wahpeton lineal descendancy -- and their rights as Indians to these funds allocated for their benefit.

Thank you.

(o. Josephine (Culbertson) Zollinger

Josephine (Culbertson) Zollinger
201 Spring Creek Drive
Eugene, Oregon 97404

Written Testimony before Senate Select Committee of Indian Affairs
Senate Bill 2118

Mr. Chairman and Members of the Committee:

My name is Gloria Smith Culbertson, and I am writing in opposition to Senate Bill 2118.

On March 6, 1975 my son, James Smith (dob 02/02/72), received the attached letter in which he was informed that his application had been received to determine his eligibility for sharing in the Sisseton-Wahpeton Judgment Fund. He was told that the determination of his eligibility would be made on the basis of the information contained in his application.

On April 15, 1986 I called the Aberdeen Area Office to see if my son was ever determined to be eligible for the Judgment Fund. I talked with Mr. Del Left Hand who confirmed that my son had been declared eligible for the Fund, solely on the basis that he is a lineal descendant of Jacob and Jennie Thompson (my grandparents), whose names both appeared on the 1909 Annuity Rolls. Mr. Left Hand explained that any lineal descendant of anyone listed on those above-mentioned rolls was deemed to be eligible for sharing in the Sisseton-Wahpeton Judgment Fund. He further explained that distribution of those funds to lineal descendants would be subject to decisions made on the appeals now in progress and also to the bill introduced in Congress whereby the Devils Lake, Sisseton-Wahpeton, and Ft. Peck Reservations are seeking to get that money for themselves.

All three of my sons are 13/16 Indian. Even though they fall 3/16 short of being full bloods, I cannot enroll them in any tribe because of the criteria used on most reservations to determine membership on the rolls. My children will never receive any benefits that enrolled Indians are entitled to even though they are more Indian than a good many enrolled Indians.

I am perplexed as to the distribution of the Judgment Fund should the Sisseton-Wahpeton, Devils Lake, and Ft. Peck Reservations get their hands on it, namely:

> It does not make sense that these reservations receive these monies as the Sisseton-Wahpetons enrolled on these reservations have already received their per capita shares of this Fund. And, if these monies were to be allotted to these reservations, they could not rightfully be put into programs because the off-reservation Sisseton-Wahpetons would not benefit from them.
>
> It does not make sense that the Ft. Peck Reservation receive these monies because not all Ft. Peck tribal members are lineal descendants of Sisseton-Wahpetons. And, if these monies were allotted to Ft. Peck, they could not put it into programs for the Reservation because there are other Sioux bands and Assiniboines living there who would be benefitting from money that they are not entitled to. The only other alternative for the use of these monies at Ft. Peck would be to use it as per capita payments for the Sisseton-Wahpetons enrolled at Ft. Peck. These Sisseton-Wahpetons have already received their per capita shares of this Fund.

These Judgment Funds should go to the lineal descendants of the Sisseton- Wahpetons where it was originally intended to go. These Judgment Funds rightfully belong to

the lineal descendants of the Sisseton-Wahpetons as outlined in Pl 92-555. The Sisseton-Wahpeton, Devils Lake, and Ft. Peck Reservations are attempting to take money that was set aside by an act of Congress in 1972 for the lineal descendants of Sisseton-Wahpetons.

My son, as well as the other lineal descendants, will derive no benefits from the Fund if it is to be taken away from them and given to the reservations, where we don't even know how the money would be used.

[illegible]
7/15/82

IMPORTANT

United Change of Address Interior
Aberdeen Area Office
115 4th Avenue S. E.
Aberdeen, South Dakota 57401

820 SOUTH MAIN
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:
APPL. NO. 07146

MAR 06 1975

JAMES ISAAC SMITH
C/O GLORIA CULBERTSON SMITH
9455 NORTH ALLEGHENY
PORTLAND OR 97203

DEAR APPLICANT

THIS WILL ACKNOWLEDGE RECEIPT OF YOUR APPLICATION TO BE ENROLLED FOR THE PURPOSE OF SHARING IN THE JUDGMENT FUNDS AWARDED TO THE MDEWAKANTON AND WAHPAKOOTA TRIBE OF SIOUX INDIANS, AND THE SISSETON AND WAHPETON TRIBES OF SIOUX INDIANS AS PROVIDED IN PUBLIC LAW 92-555, THE ACT OF OCTOBER 25, 1972, (86 STAT. 1169), AND THE REGULATIONS PREPARED PURSUANT THERETO.

THE DETERMINATION OF ELIGIBILITY WILL BE MADE ON THE BASIS OF THE INFORMATION CONTAINED IN THE APPLICATION AND SUCH OTHER EVIDENCE AS YOU MAY HAVE SUBMITTED OR IS AVAILABLE. ANY APPLICANT DETERMINED TO BE ELIGIBLE WILL BE NOTIFIED IN WRITING OF THE AREA DIRECTORS FAVORABLE DECISION. ALSO, A WRITTEN NOTICE WILL BE GIVEN TO EACH PERSON DETERMINED TO BE INELIGIBLE, ADVISING HIM OF THE AREA DIRECTORS ADVERSE DECISION AND OF THE PROCEDURE TO BE FOLLOWED IN THE EVENT HE CHOOSES TO APPEAL FROM THAT DECISION.

IN AN EFFORT TO AVOID CORRESPONDENCE BEING MISSENT, IT WOULD BE MOST HELPFUL IF YOU WILL KEEP THIS OFFICE INFORMED OF ANY CHANGE IN YOUR MAILING ADDRESS.

SINCERELY YOURS,

HARLEY D ZEPHIER

DIRECTOR, TRIBAL GOVERNMENT
AND INDIAN RIGHTS GROUP

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO
Enrollment & Claims
206-A04112

NOV 24 1978

Mrs. Josephine Zollinger
2101 Buck Street
Eugene, Oregon 97405

Dear Mrs. Zollinger:

This is in response to your letter of November 12, concerning the Mississippi Sioux Judgment Award under the Act of October 25, 1972.

The notices of eligibility that you and your brother and sisters received were mailed in connection with the approval of the roll of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. To be eligible for the Fort Peck Sisseton-Wahpeton roll, individuals must be enrolled with the Assiniboine and Sioux Tribes and must be a lineal descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe. Those that are not enrolled with the Assiniboine and Sioux Tribes, but are of Sisseton and Wahpeton descent will share in the award as lineal descendants on the roll being prepared by our office provided they have filed a timely application.

We realize that many members of the Fort Peck Tribes have filed lineal descendancy applications with our office. Under the provisions of the Act and the regulations governing the preparation of the lineal descendancy rolls, they will share as a member of the Fort Peck Tribes.

After a review of our records, we find that your son, William David Zollinger is not a member of the Assiniboine and Sioux Tribes, but is a lineal descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe and has a timely filed application in our office for the lineal descendancy roll. He, therefore, no doubt will be eligible for the lineal descendancy roll.

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

At this time we are concentrating our efforts on the tribal rolls envisioned in the Act. Once the Fort Peck roll is completed and the money distributed, we will begin the research of the applications of those that are descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe. Please be advised that each applicant will be notified in writing of the determination of his or her application.

We hope that this answers your questions. Please feel free to contact our office if you have any additional questions.

Sincerely,

Paul W. Bicotte

Supervisory Tribal
Operations Specialist

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:
APPLI. NO. 07148

DEC 17 1979

WILLIAM DAVID ZOLLINGER
C/O JOSEPHINE CULBERTSON ZOLLINGER
2101 RUCK STREET
EUGENE OR 97405

DEAR APPLICANT

YOUR APPLICATION FOR ENROLLMENT AS A LINEAL DESCENDANT OF THE MDEWAKANTON-WAHPAKOOTA AND SISSETON-WAHPETON BANDS OF SIOUX TO SHARE IN THE DISTRIBUTION OF THE TRIBES JUDGMENT FUNDS UNDER THE PROVISIONS OF THE ACT OF OCTOBER 25, 1972 (86 STAT. 1168) HAS BEEN APPROPRIATELY REVIEWED.

YOU HAVE BEEN DETERMINED TO BE A DECENDANT OF THE SISSETON-WAHPETON BAND AND ELIGIBLE TO SHARE IN ABOVE FUNDS. HOWEVER WE CANNOT SAY HOW SOON THE PAYMENT WILL BE MADE. THE ACT PROVIDES THAT, IN ADDITION TO THE LINEAL DESCENDANCY ROLL FOR WHICH YOU ARE ELIGIBLE, THREE OTHER TRIBAL ROLLS MUST BE APPROVED BEFORE THE FUNDS CAN BE DISTRIBUTED.

YOUR COOPERATION IN KEEPING THIS OFFICE INFORMED OF ANY CHANGE IN YOUR MAILING ADDRESS WILL BE APPRECIATED.

SINCERELY,

William R. Benjamin

AREA DIRECTOR

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO
Enrollment & Claims
Appl. No. S-07147

MAR 30 1981

Mrs. Josephine Zollinger
201 Spring Creek Drive
Eugene, OR. 97404

Dear Mrs. Zollinger:

This will acknowledge receipt of your letter dated March 13, requesting information concerning the current status of the Mississippi Sioux Judgment Award.

In reviewing your file we find that the application you filed for the purpose of sharing in the above-mentioned award was rejected because you are enrolled with the Assiniboine and Sioux Tribe of the Fort Peck Reservation listed opposite ID number 206-A04112 and received the partial per-capita payment of $185.00 issued May 5, 1979. Your son, William has been determined eligible as a lineal descendant; however, since he is a minor, his share will be desposited into an Individual Indian Money account. Regulations issued December 6, 1976, mandate that per-capita shares exceeding $100.00 will be held for the minor in an IIM account until he/she reaches 18 years of age.

Our roll approval efforts are presently concentrated on the Santee portion of this award involving six (6) separate groups. Following this we will move toward a Fort Peck Sioux member distribution and then on to a payment of the Sisseton-Wahpeton descendants. We must caution you that a great deal of work remains before actual distribution takes place. Consequently, we are unable to project a disbursement date. Meanwhile, we ask that you keep our office advised of any future address changes.

Thank you for your continued patience. If we can be of any further assistance, please contact us again.

Sincerely,

Supervisory Tribal
Operations Specialist

cc: Appl. No. S-07148 William David Zollinger

Written testimony Before Senate Select
Committee of Indian Affairs
Senate Bill 2118

I would like to submit this written testimony in opposition of Senate Bill 2118 on behalf of my two sons Gordon C. Harvey and Thomas N. Harvey, who have been accepted as Lineal Descendants of the Sisseton-Wahpeton Sioux.

My name is Karen (Culbertson) Harvey and I am an enrolled member of the Ft. Peck Sioux Tribe. My father was 5/8ths Ft. Peck Sioux and my mother is 5/8ths Sisseton-Wahpeton Sioux. Although my children are 5/16ths Sioux Indian, I am unable to enroll them on my reservation because Tribal Policy does not accept my mother's Sisseton-Wahpeton Sioux blood.

If this Bill passes, I am concerned regarding the distribution and use of these funds. I understand that the Sisseton-Wahpeton, the Deveils Lake and the Ft. Peck Tribes would like these funds to be returned to the Tribes because of the Gramm-Ruddman Act which reduces Federal Funds to the Reservation Programs. Since not all members of the Devils Lake nor Ft. peck Tribes are Lineal Descendants of the Sisseton-Wahpeton Sioux, I cannot understand how with good conscience they can ask for the passage of Senate Bill 2118. In asking for the passage of this bill they are asking that this Committee ignore the fact that a law (PL 92-555) has already been passed acknowledging that the Indian People on the Sisseton-Wahpeton Lineal Descendant rolls are entitled to these funds.

I strongly urge that this Senate Committee consider the money and time spent putting these rolls together and the time and work of the descendants to prove their Sisseton-Wahpeton Sioux Heritage. Consideration should also be given to the rights of these descendants as Citizens of the United States under Law PL 92-555 and their rights as Indians to these funds allocated for their benefit.

Thank you,

Karen (Culbertson) Harvey

Karen (Culbertson) Harvey
Ft. Peck Tribal Member
Enrollment No. 206-U050070

Written Testimony before Senate Select Committee on Indian Affairs

Senate Bill 2118

Mr. Chairman and Members of the Committee:

I would like to submit the following additional written testimony in opposition to Senate Bill 2118.

All enrolled members of the Sisseton-Wahpeton Sioux Tribe of South Dakota, the Devil's Lake Sioux Tribe of North Dakota, and the Assiniboine and Fort Peck Sisseton-Wahpeton Sioux of Montana are lineal descendents, and they were so recognized under the Sisseton-Wahpeton Act of October 25, 1972 (86 Stat. 1168).

The other Sisseton-Wahpeton Sioux lineal descendants, not enrolled with any of the above three tribes, include my relatives:

1) my son, William David Zollinger	5/16th total Indian
2) my nieces, Joanne and Janine Nelson	5/8ths total Indian
3) my nephew, James Isaac Smith	13/16ths total "
4) my nephews, Gordon C. & Thomas Harvey	5/16ths total "

All of the above children are more than 1/4th Sioux, but all have been denied enrollment with the Assiniboine and Fort Peck Sioux Tribe. None of them are enrolled elsewhere nor can they be enrolled because of similar tribal enrollment ordinances.

Attached are copies of the rejection letters for enrollment of William David Zollinger and Gordon C. Harvey, two of the above children, which describe explicitly the reasons for enrollment denial.

We, therefore, filed application forms for the "other lineal descendancy roll" with the Area Director, BIA, Aberdeen, South Dakota, as stated under Section 201 (b).

Thank you.

Yours very truly,

Josephine (Culbertson) Zollinger

Josephine (Culbertson) Zollinger
201 Spring Creek Drive
Eugene, Oregon 97404

April 22, 1986

Enc. - 2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

BILLINGS AREA OFFICE
316 NORTH 26TH ST
BILLINGS, MONTANA 59101

IN REPLY REFER TO:
Tribal Operations
063

DEC 2 - [illegible]

Memorandum

To: Superintendent, Fort Peck Agency

From: Office of Area Director

Subject: Enrollment Appeal on Behalf of William David Zollinger

We received an appeal for enrollment into the Assiniboine and Sioux Tribes of the Fort Peck reservation on behalf of William David Zollinger. The "Notice of Appeal" was prepared by Fleck, Mather, Strutz, and Mayer Law Firm of Bismarck, North Dakota, acting for Mrs. Josephine Culbertson Zollinger, 206-A04112, who is the mother of William.

An affidavit (copy attached) signed by Mrs. Zollinger's brother, Harold James Culbertson, states both he and Josephine are "5/8 Assiniboine and Sioux blood." However, according to the 1960 approved Assiniboine and Sioux Fort Peck Membership roll Josephine Culbertson Zollinger and her brothers and sisters are 5/16 Fort Peck Sioux and 5/8 Total Indian blood. The difference is due to the fact that their mother, Mathilda Thompson, is 5/8 degree Sisseton Sioux blood and this blood is creditable only to Josephine's <u>total</u> Indian blood.

The application for enrollment in the Fort Peck Tribes of William David Zollinger was denied on September 24, 1970. The denial was based on criteria set forth in the Tribes' Enrollment Ordinance No. 1, Section 1(d) and Section 5, as follows:

> <u>Section 1(d)</u> -
> "Each child of one-fourth or more Assiniboine and/or Sioux blood born after the effective date of this ordinance (October 1, 1960) to any member of the Assiniboine and Sioux Tribes, provided the parents are citizens of the United States at the time of the child's birth."
>
> <u>Section 5</u> -
> "Wherever the term "Assiniboine or Sioux blood" is used in this article, it shall be determined to mean the blood of either or both the Assiniboine or the Sioux Tribe of the Fort Peck Reservation, Montana."

It appears the appeal for enrollment of William David Zollinger is based on the total Indian blood William possesses. Total Indian blood, however, is not applicable in determining eligibility for membership in the Fort Peck Tribes.

The appeal, filed within the 60-day limitation period and in accordance with Section 4 of Enrollment Ordinance No. 1, is attached to this letter. In order to document the case and handle the appeal correctly, it will be necessary for the Tribal Executive Board to review the appeal and take some formal action. This would probably be in the form of a resolution either approving or disapproving William David Zollinger's enrollment.

All pertinent material and documents should be submitted to the Area Office and Mrs. Zollinger and her attorney advised of the Executive Boards decision.

(S[illegible]

Acting

Area Director

Enclosures

cc: Through Supt., Fort Peck Agency, Att: Mr. William Youpee, Chairman
Tribal Executive Board
Fleck, Mather, Strutz and Hayer Law Firm, Att: Russell R. Mather
P. O. Box 1436, Bismarck, North Dakota, 58501
Mr. Marvin J. Sonosky, Fort Peck Tribal Attorney, 1225 19th St. N.W.
Washington, D. C. 20,036
BCCO 9894, Room 255

TRIBAL EXECUTIVE BOARD

Assiniboine and Sioux Tribes
Fort Peck Indian Reservation
Box 1027
POPLAR, MONTANA 59255

October 30, 1969

Mrs. Karen C. Harvey
9524 N. Polk
Portland, Oregon 97200

Dear Mrs. Harvey:

In reference to the enrollment application for your son Gordon Charles Harvey.

As per Enrollment Ordinance #1, Section 1, (D) the above named child must possess One-Fourth or more Assiniboine and / or Sioux blood of the Fort Peck Reservation as of October 1, 1960.

According to our records, you are enrolled as 5/16 Sioux and 5/8 total Indian.

This would make your son 5/32 Sioux, which is less than 1/4 degree required, therefore he would not be eligible for enrollment on the Fort Peck Reservation.

Sincerely,

Shirley Crowe

Shirley Crowe, Enrollment Clerk
Fort Peck Tribes

PREPARED STATEMENT OF JOYCE D. NELSON

I am present today to testify on behalf of my daughters Joanne Nelson and Janine Nelson who have been acknowledged and accepted as Lineal Descendants of the Sisseton-Wahpeton Sioux Tribe.

I am 5/8ths Sioux Indian. I am an enrolled member of the Ft. Peck Indian Reservation. My husband is 5/8ths Sioux Indian and is an enrolled member of the Pine Ridge Sioux Reservation. Our two oldest children are enrolled members of the Ft. Peck Reservation. In 1960 an Enrollment Ordinance was adopted by our Tribal Council preventing our two youngest daughters Joanne and Janine, who are also 5/8th Sioux Indian from being enrolled on the Ft. Peck Reservation.

In 1972 a bill was passed setting aside 25 percent of a Claim received by the Sisseton-Wahpeton, Devils Lake and Assiniboine - Ft. Peck Sioux Tribes to be paid out to the Lineal Descendants of the Sisseton-Wahpeton Sioux Tribe. The individuals responsible for this Bill intended to assure these Lineal Descendants a monetary payment, knowing in their wisdom that this may be the only payment they may receive in their lifetime. Their concern was for the welfare of their people.

IS THERE NO END TO WHAT WE WILL DO FOR THE ALMIGHTY DOLLAR? It has been stated by many of our Indian Leaders, with great pride, that we are not a materialistic culture. This may have been true at one time but the action here today has proven our Indian Leaders wrong.

The Bureau of Indian Affairs was negligent in not informing the Lineal Descendants of this hearing on Senate Bill 2118 which is trying to deny them of their designated portion of the Sisseton-Wahpeton Claim money.

In summary, I say to those tribal individuals responsible for the makeup of Senate Bill 2118 to hang their heads in SHAME for undermining other Sisseton-Wahpeton Sioux Lineal Descendants of their rightful Indian Heritage.

I strongly oppose Senate Bill 2118 and appeal to you to do the same.

I thank you.

Joyce D. Nelson

Joyce D. Nelson

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

17 APR 1986

Honorable Mark Andrews
Chairman
Senate Select Committee
on Indian Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S. 2118, a bill to "provide for the distribution of funds appropriated to pay a judgment awarded to the Sisseton and Wahpeton Tribes of Sioux Indians in Indian Claim Commission dockets numbered 142 and 359, and for other purposes." You have specifically requested our views as to whether S. 2118 would violate the just compensation clause of the Fifth Amendment by eliminating the lineal descendants from distribution of the judgment fund as provided for in Public law 92-555.

As a general rule, the United States Supreme Court has deferred to congressional determinations as to what are the most efficient or best uses to which tribal funds can be put. See Delaware Tribal Business Committee v. Weeks, 430 U.S. 73, 84 (1977). In that case, the Supreme Court held that Congress' exclusion of the Kansas Delawares from a distribution of judgment act (Public Law 92-456) was "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." 430 U.S. at 85. The Court noted that the distribution authorized by Public Law 92-456 had not yet occurred and that Congress had the power to revise its original allocation. 430 U.S. at 90.

In the case of S. 2118, we do not have information before us as to the reasons for the proposed exclusion of the lineal descendants of the Sisseton-Wahpeton Sioux from the 1972 distribution of judgment act (Public Law 92-555). Without this information, we cannot assess whether the proposed exclusion meets the "tied rationally" test. However, we do note that Delaware Tribal Business Committee v. Weeks strongly suggests that where funds have not actually been paid out Congress remains free to change the distribution scheme. 430 U.S. at 90. Here, the Sisseton-Wahpeton lineal descendants' proportionate share of the judgment funds has never been paid to them.

The issue remains whether S. 1128 would violate the just compensation clause of the Fifth Amendment. We assume, based on the available information, that the lineal descendants of the Sisseton-Wahpeton Sioux are not a tribal entity, but merely individual Indians with no vested rights in any tribal property. 430 U.S. at 85. Accordingly, the question presented is whether Public Law 92-555 gave the lineal descendants a constitutionally protected property interest in the judgment funds in question. Where Congress has deprived individual Indians of vested property rights without providing for compensation for these rights, such action gives rise to a Fifth Amendment taking. Irving v. Clark, 756 F.2d 1260, 1268 (8th Cir. 1985).

In a case involving analogous facts, the United States Supreme Court ruled that a 1968 statute enlarging the class of Navajo Indians entitled to share in royalties from tribal oil and gas leases (on the Areth Extension of the Navajo Reservation added in 1933 by Congress) did not constitute a Fifth Amendment taking of any property rights of the more limited class of Navajo Indians originally designated as the beneficiaries of these royalties. United States v. Jim, 409 U.S. 80, 82 (1972), reh'g denied, 409 U.S. 1118 (1973). The Court held that the 1933 Act did "not create constitutionally protected property rights" in the Navajo Indian beneficiaries designated therein. 409 U.S. at 82. Rather, the 1933 Act merely established a distribution scheme for tribal property which Congress had the power to subsequently alter. 409 U.S. at 82. Funds appropriated to pay a judgment under the Indian Claims Commission Act are tribal property. Delaware Tribal Business Committee v. Weeks, supra, 430 U.S. at 85.

We note that none of the judgment funds in question has ever been paid to the Sisseton-Wahpeton lineal descendants. United States v. Jim, supra, indicates that even actual payment of money under a distribution scheme does not preclude an alteration of that scheme and that the alteration still does not give rise to a Fifth Amendment taking.

We hope that this information proves useful to your Committee in its consideration of S. 2118. Whether this legislation should be enacted involves policy considerations as to which the Department of Justice defers to the Department of the Interior.

The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

John R. Bolton

John R. Bolton
Assistant Attorney General

Senator Mark Andrews
U.S. Senate
Select Committee on Indian Affairs
Washington D.C. 20510

1985 APR 31 AM 9 20

Honorable Senator Andrews:

I am writing in regards to S. 2118, a bill "to provide for the distribution of funds appropriated to pay a judgement awarded to the Sisseton-Wahpeton Tribes of Sioux Indians in Indian Claims Commission dockets numbered 142 and 359." I am pleased to see such a bill in the U.S. Congress that will finally correct a wrong inflicted upon the Sioux Bands covered under the original distribution.

Specifically, the wrong I am referring to is in regards to the U.S. Dept. of Interior, Bureau of Indian Affairs position in the late 60's and early 70's regarding the disposition. As I recall, it was the BIA's position that none of the modern day successor tribes were exclusively or legally entitled to the claim money payment. Instead, the BIA insisted that only lineal descendants were entitled to the claim.

I was elected to the Tribal Secretary position for the Sisseton-Wahpeton Sioux Tribe in 1970. I served in this capacity until 1974 when I was elected Tribal Chairman, I served in this capacity until January 1981. As Secretary, I recall numerous meetings with BIA officials in attempts to sway their position regarding lineal descendants. It was a collective position of the tribes that lineal descendants did not belong in the legislation for distribution of money.

During the late 1960's and early 1970's few pieces of Indian legislation ever made it through the congress without the BIA's endorsement. The distribution of money under dockets 142 & 359 was threatened without the BIA's support! Regardless of the effort by the leadership of all three tribes, the BIA would not delete lineal descendants from their postion, in fact their standard response was, "if you do not include lineal descendants you will not get the Bureau's support nor will you get a bill out of the congress!" In my opinion, this was out and out BLACKMAIL.

All of the tribes needed the money, both for the 70% per capita and 30% for reservation development, thus, the tribes acquiesced to the BIA and agreed that a percentage of money would be set aside for the lineal descendants.

S.2118 will now correct a grave injustice and I fully support the legislation and commend you and the co-sponsors for taking this action. If the Congress had such a committee as yours in the 60's this type of conduct would not have happened to so many Native Americans in the past.

Respectfully,

Jerry Flute

Jerry Flute
Former Tribal Chairman
Sisseton - Wahpeton Sioux Tribe

709 Morningside Court
Herndon, VA 22070
April 14, 1986

To Whom This May Concern:

I am writing this letter on behalf of my children: Marc Renville, Roger Renville and Fern Renville. Marc had intended to meet with the staff of Senators Pressler and Andrews today; however, he could not afford the transportation from Minneapolis, Minnesota, to Washington, DC. Therefore, this letter is in lieu of a personal visit from Marc Renville in support of Senate Bill No. 2118.

Senate Bill No. 2118, if passed, will favorably impact the lives of Marc, Roger and Fern Renville. It will mean that funds will be available to the Sisseton-Wahpeton Sioux Tribe to make a per capita payment to the children who were entitled to enrollment at birth, but who were not enrolled by the Tribe until July 1985. The children, ncwages 22, 24 and 25 are in desperate need of the per capita payments in order to continue their college education.

Since their enrollment in July 1985, the Tribe has not been financially able to pay the per capita payments which would have accrued since the childrens' infancy if they had been enrolled at the time applications for enrollment were made to the Tribe. I understand that the Tribe lost the enrollment records, and it was several years later that I learned that the children had not been enrolled.

It is also our understanding that Senate Bill No. 2118 would mean that the childrens' names would be removed from the Linear Descendency Roll and that the monies set aside for them on that roll would concurrently be made available to the Tribe for distribution of per capita payments.

Anything we can do to show our support for this bill should be brought to my attention. I can be contacted at (703) 437-7660 - home, or (202) 343-7978 - work. Thank you for the sponsorship of this bill.

Sincerely,

Jeannette E. Salazar

Enclosures (Certificates of Degree of Indian Blood for Marc, Roger, and Fern Renville)

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO

ENROLLMENT & CLAIMS
SECTION

CERTIFICATE OF DEGREE OF INDIAN BLOOD

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT MARC OWEN RENVILLE, BORN FEBRUARY 3, 1961, IS THE SON OF ROBIN JOSEPH RENVILLE, BORN DECEMBER 23, 1941, WHO IS AN ENROLLED MEMBER OF THE OMAHA TRIBE OF NEBRASKA LISTED OPPOSITE ENROLLMENT NUMBER 380-1821 ON THE OMAHA MEMBERSHIP ROLL PREPARED PURSUANT TO THE ACT OF SEPTEMBER 14, 1961, AND POSSESSES 1/4 DEGREE OF OMAHA INDIAN BLOOD. THEREFORE, MARC POSSESSES 1/8 DEGREE OF OMAHA INDIAN BLOOD.

THIS IS ALSO TO CERTIFY THAT MARC POSSESSES 7/32 DEGREE OF SISSETON-WAHPETON SIOUX INDIAN BLOOD AND 1/8 DEGREE OF SENECA-CAYUGA INDIAN BLOOD FOR A TOTAL OF 15/32 DEGREE INDIAN BLOOD. HOWEVER, MARC IS NOT ENROLLED WITH THE OMAHA TRIBE OF NEBRASKA, THE SISSETON-WAHPETON SIOUX TRIBE OF LAKE TRAVERSE OR THE SENECA-CAYUGA TRIBE OF OKLAHOMA.

Acting AREA DIRECTOR

DATED: 3-22-83

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO
ENROLLMENT & CLAIMS
SECTION

CERTIFICATE OF DEGREE OF INDIAN BLOOD

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT ROGER JOSEPH RENVILLE, BORN FEBRUARY 8, 1962, IS THE SON OF ROBIN JOSEPH RENVILLE, BORN DECEMBER 23, 1941, WHO IS AN ENROLLED MEMBER OF THE OMAHA TRIBE OF NEBRASKA LISTED OPPOSITE ENROLLMENT NUMBER 380-1821 ON THE OMAHA STATUTORY MEMBERSHIP ROLL PREPARED PURSUANT TO THE ACT OF SEPTEMBER 14, 1961, AND IS SHOWN AS POSSESSING 1/4 DEGREE OF OMAHA INDIAN BLOOD. THEREFORE, ROGER POSSESSES 1/8 DEGREE OF OMAHA INDIAN BLOOD.

THIS IS ALSO TO CERTIFY THAT ROGER POSSESSES 7/32 DEGREE OF SISSETON-WAHPETON SIOUX INDIAN BLOOD AND 1/8 DEGREE OF SENECA-CAYUGA INDIAN BLOOD FOR A TOTAL OF 15/32 DEGREE INDIAN BLOOD. HOWEVER, ROGER IS NOT ENROLLED WITH THE OMAHA TRIBE OF NEBRASKA, THE SISSETON-WAHPETON SIOUX TRIBE OF LAKE TRAVERSE OR THE SENECA-CAYUGA TRIBE OF OKLAHOMA.

AREA DIRECTOR

DATED: 3/9/83

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO
Enrollment & Claims

MAR 18 1985

Ms. Fern Renville
c/o Jeannette E. Salazar
P.O. Box 125
Santa Cruz, New Mexico 87567

Dear Ms. Renville:

The following information is provided in response to your recent letter requesting documentation relative to your total degree of Indian blood.

You possess 1/8 Omaha Indian blood, 7/32 Sisseton-Wahpeton Sioux Indian blood and 1/8 Seneca-Cayuga Indian blood or 15/32 total degree of Indian blood. The records show you are not enrolled with any of these tribes.

We are advised by the Washington Office that we can no longer issue Certificates of Indian Blood to non-enrolled tribal members. However, we can verify possession of Indian blood such as the above.

Sincerely,

Tribal Operations Specialist

62-542 (72)